

# STATE OF MINNESOTA

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September 24, 1998

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Washington, D.C. 20554

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SEP 25 1998

FCC MAIL ROOM

Re: In the Matter of Deployment of Wireline Services Offering  
Advanced Telecommunications Capability  
CC Docket No. 98-147

Dear Ms. Salas:

Enclosed for filing in the above-referenced matter please find the original and nine copies of the Comments of the Minnesota Department of Public Service.

Also enclosed is a document marked "receipt copy" for date stamping and a self addressed, stamped envelope.

Sincerely,

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Deployment of Wireline Services Offering )  
Advanced Telecommunications Capability )

CC Docket No. 98-147

**COMMENTS OF THE  
MINNESOTA DEPARTMENT OF PUBLIC SERVICE**

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## INTRODUCTION AND SUMMARY OF ARGUMENT

On August 7, 1998, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) asking for comment on proposals to speed deployment of advanced telecommunications services.<sup>1</sup> The FCC proposed allowing an incumbent local exchange carrier (LEC) to offer advanced services through a separate affiliate free from incumbent LEC regulation. The FCC also proposed imposing additional requirements on incumbent LECs to provide collocation and access to loops, and sought comment on ways to modify the section 251(c) unbundling requirements. Finally, the FCC sought comment on measures that would provide Bell Operating Companies (BOCs) with targeted interLATA relief on the theory that such relief would aid all consumers, even those in rural areas, to reap the benefits of advanced telecommunications capability.

The Minnesota Department of Public Service (Department) is a state agency with regulatory and enforcement responsibilities with respect to telephone, gas, and electric services.<sup>2</sup> The Department has investigated problems associated with the advanced services offerings of U S WEST, the largest incumbent LEC in Minnesota. In addition, because the state of Minnesota is largely comprised of rural areas, the Department has expertise in analyzing the needs of rural telecommunications service consumers. The Department offers its comments in

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<sup>1</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket No. 98-147 (rel. Aug. 7, 1998) (NPRM).

<sup>2</sup> See, e.g., Minn. Stat. § 216A.07, subd. 2.

this proceeding out of concern that the FCC's proposals, without some modification, may in fact hinder rather than encourage deployment of advanced services to consumers.

Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services to all consumers, in all areas, both rural and urban. The Department thus supports specific modifications to the FCC's proposals that will encourage the development of competition in this increasingly important market. The Department urges the FCC not to exempt any advanced services incumbent LEC affiliate from nondominant regulation, at least not for a transition period until the various incumbent LEC corporate entities demonstrate that they are not granting one another any competitive advantage. The Department's experiences with U S WEST's offerings of advanced services indicate that, absent careful oversight, U S WEST's various corporate sections will do their best to favor one another at the expense of competitors. For example, as described below, U S WEST has provided and promoted its digital subscriber line (DSL) service in Minnesota in a manner that encourages end user customers to sign up with its information services affiliate, USWEST.NET, rather than with unaffiliated information service providers (ISPs). The Department thus urges the FCC not to remove immediately the tariff requirement, through which consumers, carriers, the Department, and other regulatory and enforcement agencies can monitor whether an incumbent LEC's advanced services affiliate is truly separate and treating all customers fairly and equally. The FCC should also continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services. In addition, the Department supports some minimum pro-competitive restraints on

joint marketing among affiliates, upon which state regulators could build as necessary to encourage and protect competition. The Department further advocates that transfers of customer accounts and customer proprietary network information (CPNI) from an incumbent LEC to its advanced services affiliate, as well as joint marketing, should be deemed to make that affiliate an assign of the incumbent LEC. Moreover, the Department generally supports the FCC's proposals to strengthen collocation and access to loop requirements for incumbent LECs, and to examine additional unbundling requirements. Finally, the Department disagrees with the FCC's tentative conclusion that BOCs should be allowed to carry packet-switched traffic across LATA boundaries for the purpose of providing their subscribers with high-speed connections to nearby network access points. However, if the FCC adopts its tentative conclusion, the Department proposes criteria that BOCs should be required to meet in order for their requests to be granted.

The FCC should deem any requirements it enacts in this proceeding as a minimum beyond which state agencies can impose additional requirements as necessary to advance competition in the advanced services and information services markets in their specific states. The most effective method of advancing competition in the advanced services market is to allow states the flexibility to adopt additional requirements that address state-specific competitive circumstances. State regulators must retain the freedom to impose additional safeguards consistent with the principle of speeding deployment of advanced services through encouraging competition and to intervene if they witness an incumbent LEC or its advanced services affiliate acting anticompetitively.

## ARGUMENT

### **I. TO SPEED DEPLOYMENT OF ADVANCED SERVICES TO ALL AREAS, RURAL AND URBAN, THE FCC'S RULES MUST ADVANCE COMPETITION IN THE ADVANCED SERVICES MARKET.**

The Department is committed to encouraging the deployment of advanced services to all consumers, in all areas, both rural and urban. Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services, as well as deployment of information services. Competition gives incumbent carriers an incentive to develop new and innovative services such as advanced services, and to provide those services more quickly and efficiently and at a higher level of quality. Thus, any FCC rules relating to advanced services should enable and encourage competition in the advanced services marketplace.

The theory behind the 1996 Act is that competition, and the resulting benefits such as development of new and innovative services, will be brought about through a carefully constructed system whereby incumbent LECs are promised new freedoms as an incentive to open up the network and provide new entrants with items necessary for competitive entry. If incumbent LECs acquire part of this flexibility without having to fulfill their obligations to open up the network, then the incentives for incumbent LECs to ever open up the network are greatly reduced. Congress's carefully constructed balance will thus be destroyed.

The Department is concerned that the FCC's proposals, as currently stated, tip the balance in favor of the incumbent LECs. The Department fears that the FCC's proposals provide



incumbent LECs with a large part of what they desire without firmly enforcing the requirements of the 1996 Act or the FCC's own rules to aid competitive entry. Advanced services are not some small, unimportant subset of services that can be treated as an exception to the general rules set forth by the FCC's rules on local competition. Rather, "advanced" services may soon take on an everyday character as technology continues to develop rapidly. Advanced services could well be a major source of the telecommunications market's growth in the future. Thus, if gaining flexibility in providing advanced services is one of the incumbent LECs' primary goals, then granting flexibility now without demanding the incumbent LECs fulfill their obligations eliminates in large part their incentive to ever open the network.

**II. THE MOST EFFECTIVE METHOD OF ADVANCING COMPETITION IN THE ADVANCED SERVICES MARKET IS TO ALLOW STATES THE FLEXIBILITY TO ADOPT ADDITIONAL REQUIREMENTS THAT ADDRESS STATE-SPECIFIC COMPETITIVE CIRCUMSTANCES.**

The FCC should deem any requirements it enacts in this proceeding as a minimum beyond which state agencies can impose additional requirements as necessary to advance competition in the advanced services and information services markets in their specific states. The advanced services and information services markets differ greatly in different regions of the country. For example, as discussed below in section III.A., in Minnesota U S WEST is a monopoly provider of DSL service in its service territory. Many of the competitors to U S WEST's information service affiliate, USWEST.NET, are small, local ISPs. U S WEST controls these small ISPs' connection with its DSL service (called MegaBit Service) and thus whether these ISPs' customers may take advantage of high-speed Internet access. State regulators are

uniquely positioned to evaluate such regional differences, and to determine whether the minimum federally-set rules are sufficient to encourage and protect competition, or whether more action is necessary.

Thus, state regulators must retain the freedom to impose additional safeguards consistent with the principle of speeding deployment of advanced services through encouraging competition and to intervene if they witness an incumbent LEC or its advanced services affiliate committing anticompetitive actions. The FCC should not prevent state regulators from adjusting regulation of incumbent LECs' advanced services affiliates according to the needs and conditions of the particular state. State regulators should be able to regulate an incumbent LEC's advanced services affiliate differently than other competitive local exchange carriers (CLECs) that are offering advanced services.<sup>3</sup> State regulators should be able to impose additional safeguards if conditions in that state warrant them. Furthermore, because state regulators are frequently the primary enforcers of fair market behavior, they must have the freedom to intervene if they observe advanced services affiliates practicing discriminatory and anticompetitive conduct.

**III. ANY AFFILIATE ARRANGEMENT MUST ENSURE THAT AN INCUMBENT LEC, ITS ADVANCED SERVICES AFFILIATE, AND ITS INFORMATION SERVICES AFFILIATE CANNOT FAVOR ONE ANOTHER OVER COMPETITORS.**

The FCC proposes allowing an incumbent LEC to establish an advanced services affiliate that would not be deemed an incumbent LEC if it complies with a set of structural separation and

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<sup>3</sup> See NPRM at ¶ 116.

nondiscrimination requirements.<sup>4</sup> The FCC invites commenters to propose specific modifications to the criteria it sets forth. The FCC particularly seeks comment as to how any proposed modification addresses concerns that incumbent LECs could improperly discriminate against competing providers.<sup>5</sup> The FCC also asks whether incumbent LECs that have formed their own information service providers (ISPs) are likely to be favored by incumbent LEC advanced services affiliates, to the detriment of unaffiliated competing ISPs.<sup>6</sup>

**A. Experience Demonstrates That Incumbent LEC Affiliates Will Attempt To Favor One Another, e.g., That an Advanced Services Affiliate Will Attempt To Discriminate Against Independent ISPs.**

A current example of favoritism between incumbent LEC affiliates is U S WEST's discrimination in providing advanced services where it is giving its own information service affiliate preferential treatment over competing independent ISPs. As a result of U S WEST's anticompetitive actions, competing ISPs have experienced significant difficulties in offering service to customers who ordered U S WEST's digital subscriber line (DSL) service. The Department and the Minnesota Office of the Attorney General have filed a joint complaint (Complaint) with the Minnesota Public Utilities Commission (MN PUC) against U S WEST for

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4 NPRM at ¶ 96.

5 NPRM at ¶ 97.

6 NPRM at ¶ 102.

discriminatory provisioning of its DSL service. The Complaint is included in these comments as Appendix A.<sup>7</sup>

As detailed in the Complaint, U S WEST is a monopoly provider of DSL service in its service territory. On April 3, 1998, U S WEST filed its tariff for a DSL service called "MegaBit Service" with the MN PUC with an effective date of April 13, 1998. MegaBit Service allows simultaneous use of voice grade service -- i.e., plain old telephone service (POTS) -- and high-speed data service -- i.e., DSL service -- over a single pair of copper wires. MegaBit Service allows end user customers to transmit data at speeds between 5 times and 250 times faster than conventional analog modems. MegaBit Service consists of two parts, MegaSubscriber and MegaCentral. MegaSubscriber provides a connection from the end user customer's premises to the local U S WEST central office. MegaCentral provides a connection from the central office via U S WEST's Asynchronous Transfer Mode (ATM) network to the ISP. In order for end user customers to achieve fast access to the Internet through MegaBit Service, they would (1) have to subscribe to U S WEST's MegaSubscriber service, and (2) have to subscribe to an Internet service provided by an ISP who has subscribed to MegaCentral. U S WEST controls all access points in the network used for MegaBit Service and wields significant market power and influence.<sup>8</sup>

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7 The Washington Utilities and Transportation Commission had similar concerns and imposed conditions to ensure fair treatment of competing ISPs on U S WEST's MegaBit Service offering. That order is included in these comments as Appendix B.

8 Appendix A at ¶¶ 7-14, attachment A at ¶ 3.

The Complaint alleges that U S WEST's deployment of MegaBit discriminates in favor of its information services affiliate. U S WEST claimed that it had not accepted orders for processing from any ISPs for MegaCentral until the effective date of the tariff. However, subsequent evidence demonstrated that U S WEST had in fact accepted two orders prior to the tariff's effective date -- from two U S WEST information services affiliates, USWEST.NET Minneapolis and USWEST.NET Rochester. In contrast, when an unaffiliated ISP, Sihope Communications, attempted to order MegaCentral before the effective tariff date, U S WEST delayed processing the order until after the service was tariffed.<sup>9</sup>

In addition, the Complaint alleges, U S WEST provisioned its affiliate, USWEST.NET, with facilities necessary to offer Internet access through MegaBit much sooner than it did for independent ISPs. Independent ISPs have experienced delays and difficulties obtaining the necessary MegaCentral Links (i.e., DS1 and DS3 private line transport) and MegaCentral Ports from U S WEST. While U S WEST provided the necessary facilities for USWEST.NET in Minneapolis to provide MegaBit Service on or about May 8, 1998, unaffiliated ISP Sihope Communications was not able to become operational until May 29, 1998.<sup>10</sup>

The Complaint alleges that U S WEST timed its promotion for MegaBit Service so that most end user customers who did not subscribe to Internet services from USWEST.NET could

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9 Appendix A at ¶¶ 23-24, attachment A at ¶ 5.

10 Appendix A at ¶¶ 22-24, attachment A at ¶ 6. U S WEST estimates that installation of MegaCentral facilities was completed for USWEST.NET on Friday, May 8, 1998, or Monday, May 11, 1998. Appendix A at attachment A at ¶ 6.

not take advantage of the promotion. On or about May 8, 1998, concurrent with installing MegaCentral at USWEST.NET, U S WEST initiated a promotion for MegaBit. End user customers who signed up received a free digital modem, USWEST.NET Internet access installation, and reduced rate set-up and training. Until the end of May, although numerous independent ISPs had ordered MegaCentral, U S WEST had only installed MegaCentral at USWEST.NET and possibly one independent ISP. End user customers could not receive the promotional benefits unless they subscribed to or switched to an ISP that had already installed MegaCentral. Thus, during May, USWEST.NET and possibly one independent ISP were the only ISP options for customers wanting to order MegaBit. As a result, the overwhelming majority of end user customers who participated in U S WEST's promotion went to USWEST.NET as their ISP.<sup>11</sup>

The Complaint further alleges that U S WEST's business office practices provided USWEST.NET with a marketing advantage over competing ISPs. In direct mailings to end user customers, U S WEST provided a toll free telephone number, 1-888-MegaUSW, to order MegaBit Service. Customers calling this number were given two options to continue the ordering process. Option 1 was to order MegaBit as provided in conjunction with USWEST.NET. Option 2 enabled customers to order MegaBit as provided in conjunction with other ISPs. The vast majority of customers responding to the 888 number, having no need to listen further than Option 1 to order MegaBit, chose USWEST.NET as their ISP. In addition,

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<sup>11</sup> Appendix A at ¶¶ 17-18, 23-25, attachment A at ¶ 7.

U S WEST has indicated that it may eliminate Option 2 from the 1-888-MegaUSW marketing script, so that customers calling that toll free number to order MegaBit Service will only be able to order MegaBit in conjunction with USWEST.NET.<sup>12</sup>

**B. If the FCC Allows Incumbent LECs To Provide Advanced Services Through Affiliates Not Subject To Incumbent LEC Regulation, Then It Should Strengthen Its Proposed Structural and Nondiscrimination Requirements.**

Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services to all consumers, in all areas, both rural and urban. Allowing one provider, likely the incumbent LEC, to dominate the market would limit consumer choice and reduce the incentives for that one provider to develop new and innovative services and to improve service quality. Thus, if the FCC is determined to allow incumbent LECs to provide advanced services through affiliates not subject to incumbent LEC regulation, the Department supports specific modifications to the FCC's proposals that will encourage the development of competition in this increasingly important market and hopefully will prevent the abuses experienced thus far in U S WEST's provision of advanced services. Also, the Department urges that state regulators must retain the freedom to impose additional safeguards consistent with the principle of speeding deployment of advanced services through encouraging

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<sup>12</sup> Appendix A at ¶¶ 27-37, attachment A at ¶ 8. U S WEST has indicated that it will provide a separate toll free number for end user customers to call to subscribe to MegaBit in conjunction with all other ISPs. However, U S WEST's marketing for MegaBit will list the original toll free number that will only connect callers with USWEST.NET. It is unclear how or if U S WEST would market the separate toll free number with the other ISPs. Id.

competition and to intervene if they witness an incumbent LEC or its advanced services affiliate behaving anticompetitively.

First, the Department urges the FCC not to exempt any advanced services incumbent LEC affiliate from nondominant regulation, at least not for a transition period until the various incumbent LEC parts demonstrate that they are not granting one another any competitive advantage. As chronicled above in section III.A., the Department's experiences with U S WEST's offering of advanced services indicate that, absent careful oversight, U S WEST's various corporate sections will do their best to favor one another at the expense of competitors. Second, the FCC should continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services. Third, the Department supports some minimum pro-competitive restraints on joint marketing among affiliates, which state regulators could build upon as necessary to encourage and protect competition.

The Department urges the FCC not to excuse the advanced services affiliate from nondominant regulation. The Department agrees with the view expressed by CompTel earlier in this proceeding that the grant of nondominant status to BOCs providing advanced services is inappropriate because new entrants are dependent upon BOC provisioning of local loops and other essential facilities, providing a powerful vehicle for BOCs to exercise market power in data services.<sup>13</sup> The Department is concerned that allowing an advanced services affiliate to be

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<sup>13</sup> See NPRM at ¶ 100 n.198 (citing Comments of the Competitive Telecommunications Association (CompTel), CC Docket Nos. 98-11, 98-26, and 98-32).



regulated as nondominant, and to be excused from the tariff requirement, cripples the ability to monitor whether an incumbent LEC's advanced services affiliate is truly separate. Tariffing allows consumers and carriers to ensure that they are receiving fair treatment and being offered similar terms and conditions as the incumbent LEC affiliate. Tariffing also permits the Department and other regulatory enforcement agencies to monitor potential abuses by the incumbent LEC affiliate, abuses which experience has shown are likely to happen. For example, as discussed above in section III.A., U S WEST's tariff for its DSL service, which contained specific dates when the service was to have been available equally to all ISPs, helped the Department track how U S WEST in fact favored its own information services affiliate in provisioning its DSL service.

If the FCC is determined to presume such affiliates nondominant, the Department advocates, at the very least, that the FCC continue to regulate the affiliates as dominant for a transition period until the affiliate has demonstrated that it will not abuse its new flexibility. Regulation as dominant could sunset after, for example, three years, unless the FCC deems it appropriate to extend dominant regulation.<sup>14</sup> The FCC is already considering the idea that its proposed affiliate safeguards would sunset after a certain period of time or change in conditions.<sup>15</sup> The Department urges the FCC to modify that concept by taking one step back and

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14 Cf. 47 U.S.C. § 272(f)(1) (providing that the provisions of section 272 shall cease to apply with respect to the a BOC's interLATA telecommunications services three years after the date the BOC is authorized to provide interLATA services under section 271(d), but authorizing the FCC to extend such three-year period by rule or order); NPRM at ¶ 99.

15 NPRM at ¶ 99.

maintaining the safeguard of dominant regulation at least for a transition period during which the FCC can determine whether such protection is truly unnecessary.

Second, the Department urges the FCC to continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services. As discussed in detail above in section III.A., U S WEST is already attempting to shirk this obligation when offering DSL services on an integrated basis. U S WEST has given its information services affiliate priority in the installation of and access to its MegaBit Service, resulting in delayed service and loss of business for competing ISPs. The Department fears that U S WEST's current anticompetitive actions may intensify if U S WEST is allowed to offer advanced services through an affiliate subject to less regulation.

Third, the Department proposes that the FCC specify some limitations on joint marketing between the incumbent LEC advanced services affiliate, the incumbent LEC, and the incumbent LEC's information services affiliate. Without reasonable constraints to ensure competitive neutrality, an incumbent LEC or its advanced services affiliate can greatly advantage that incumbent LEC's information services affiliate, to the detriment of competing ISPs, through discriminatory joint marketing. For example, as discussed above in section III.A., U S WEST promoted a toll free telephone number, 1-888-MegaUSW, to order MegaBit Service. Customers calling this number were given two options to continue the ordering process. Option 1 was to order MegaBit as provided in conjunction with USWEST.NET. Option 2 enabled customers to order MegaBit as provided in conjunction with other ISPs. The vast majority of customers

responding to the 888 number, having no need to listen further than Option 1 to order MegaBit, chose USWEST.NET as their ISP.<sup>16</sup>

The FCC should, at the very least, prevent incumbent LECs from leveraging their local monopoly status to advantage their affiliates through joint marketing by enacting equal access standards similar to those required for BOC in-region, interLATA services affiliates. 47 U.S.C. § 251(g) requires each LEC, to the extent that it provides wireline services, to provide exchange access, information access, and exchange services for such access to interexchange carriers and ISPs in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations that applied before the passage of the 1996 Act. In the context of joint marketing by a BOC's in-region, interLATA services affiliate governed under 47 U.S.C. § 272(g)(1),<sup>17</sup> the FCC has held that, although a BOC may market its affiliate's services, the BOC must still advise new customers of their other options for interLATA services.<sup>18</sup> The FCC could similarly require that, although an incumbent LEC's advanced services affiliate may market the information services of another of the incumbent LEC's affiliates, the advanced services affiliate must still advise new customers of its other options for information services.

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16 See supra section III.A.; Appendix A at ¶¶ 27-29, attachment A at ¶ 8.

17 That statutory provision prohibits a BOC affiliate from marketing or selling telephone exchange services provided by the BOC unless the BOC permits other entities offering the same or similar service to market and sell its telephone exchange services.

18 Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22046-47 (1996).

This standard would at least prevent U S WEST's latest discriminatory planned marketing strategy to eliminate Option 2 from the inbound marketing script to order U S WEST's DSL service, so that as a result, customers calling will be able to order MegaBit only in conjunction with its information services affiliate, USWEST.NET.<sup>19</sup> Under this strategy, U S WEST would market its advanced services in conjunction with USWEST.NET, without advising inbound callers of their other options for ISPs.

Whether or not the FCC adopts restrictions on joint marketing to protect competition, states should have the flexibility to address specific anticompetitive joint marketing behavior in their regions. States are in the best position to evaluate how a particular incumbent LEC joint marketing strategy will affect competitive entry in their specific regions.

**C. Transfers Of Customer Accounts And CPNI From An Incumbent LEC To Its Advanced Services Affiliate, As Well As Joint Marketing, Should Make The Advanced Services Affiliate An Assign Of The Incumbent LEC.**

In general, the FCC should be highly suspicious of any transfers from an incumbent LEC to its advanced services affiliate, given the great incentive for an affiliate to favor the incumbent LEC's interests. In particular, transfers of customer accounts and CPNI, as well as joint marketing, should make an incumbent LEC's advanced services affiliate an assign.<sup>20</sup> Customer

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<sup>19</sup> See infra section III.A.; Appendix A at ¶¶ 36-37, attachment A at ¶ 8. U S WEST has indicated that it will provide a separate toll free number for end user customers to call to subscribe to MegaBit in conjunction with all other ISPs. However, U S WEST's marketing for MegaBit will list the original toll free number that will only connect callers with USWEST.NET. It is unclear how or if U S WEST would market the separate toll free number with the other ISPs. Id.

<sup>20</sup> See NPRM at ¶ 113.

accounts and local service CPNI are assets that the incumbent LEC acquired as an incumbent monopoly. No CLEC was able to acquire these assets during the incumbent LEC's monopoly regime. Similarly, when joint marketing, the incumbent LEC uses assets acquired from its incumbent monopoly status on behalf of its advanced services affiliate. Transfers of assets acquired solely due to incumbent monopoly status should equate to a transfer of incumbent LEC status as well. To hold otherwise would be contrary to one of the central principles of the 1996 Act -- to ensure, to the maximum extent possible, that, as markets are opened to competition, carriers will win or retain customers on the basis of their service quality and prices, not on the basis of a competitive advantage conferred solely due to their incumbent monopoly status.

#### **IV. THE FCC SHOULD ESTABLISH ADDITIONAL MINIMUM COLLOCATION AND LOOP REQUIREMENTS THAT STATES CAN SUPPLEMENT.**

The FCC should establish additional requirements for collocation and access to local loops that will remove barriers to entry and speed deployment of advanced services. As discussed above, the 1996 Act envisioned that competition, and the resulting benefits such as development of new and innovative services, would be brought about through a carefully constructed balance whereby incumbent LECs receive new freedoms in return for opening up the network and providing new entrants with items necessary for competitive entry. Thus, any additional new flexibility that incumbent LECs acquire, such as the FCC's instant proposal to allow separate incumbent LEC advanced services affiliates, must be offset by additional new incumbent LEC obligations to open up the network in order to maintain the delicate Congressionally mandated balance.

The Department agrees with the FCC's tentative conclusion that any standards the FCC adopts should serve as minimum requirements, and that states should continue to have flexibility to adopt additional requirements that respond to issues specific to that state or region.<sup>21</sup> State regulatory and enforcement agencies are in the best position to gather information concerning the unique competitive environment in their particular states and to evaluate what supplementary actions may be necessary to advance competition. Thus, state agencies need the freedom to address state and region-specific concerns that may arise, as well as the authority to take necessary action to prevent anticompetitive behavior.

The FCC also specifically asks for comment on cageless collocation arrangements, such as that offered by U S WEST.<sup>22</sup> The Department has examined U S WEST's cageless collocation proposal. As an initial matter, the Department strongly prefers that U S WEST maintain the existing combinations of its network instead of using cageless collocation to provide combinations of unbundled network elements (UNEs) to CLECs. If cageless collocation is to be used, the Department has concerns regarding security, efficient use of space, and service quality. U S WEST's proposal requires all CLECs to use one "SPOT frame" to gain access to UNEs. CLECs can either combine UNEs at the SPOT frame or connect to their individual collocation spaces and combine the UNEs there. Giving all CLECs access to one another's equipment at the SPOT frame may result in security problems. Due to security or other concerns, CLECs may

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21 NPRM at ¶¶ 124, 155.

22 NPRM at ¶¶ 137-41.

well want to maintain their individual collocation spaces. Thus, the insertion of the SPOT frame into the collocation process may actually result in less available space for collocation. Moreover, the additional time required to construct and install the SPOT frame may increase the overall collocation construction and installation time for CLECs, thus impairing CLEC customers' quality of service. If the FCC requires that incumbent LECs provide alternative collocation arrangements, such as cageless collocation, the Department urges the FCC to incorporate measures to alleviate these concerns.

**V. THE FCC SHOULD REQUIRE A MINIMUM LEVEL OF UNBUNDLING OF NETWORK ELEMENTS, WHILE LEAVING STATES THE AUTHORITY TO ORDER FURTHER UNBUNDLING BASED ON THE NEEDS OF NEW ENTRANTS IN THE PARTICULAR STATE.**

The Department supports unbundling of network elements used by incumbent LECs in the provision of advanced services to the extent such network elements are actually requested by new entrants. Thus, the FCC should require a minimum level of unbundling of network elements that the majority of new entrants nationwide need to enter the market effectively. Incumbent LECs should be subject to the same standards of unbundling as the FCC required in its Local Competition Order, to the extent the network elements are the same, plus any additional requirements that the FCC deems necessary to encourage competitive entry and speed the deployment of advanced services.<sup>23</sup> The FCC should also continue to allow state regulators to order further unbundling, consistent with the FCC's standards, based on the needs of new entrants in the particular state.<sup>24</sup> This approach will minimize unnecessary unbundling where no

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<sup>23</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15990, 15640-44 (Local Competition Order).

<sup>24</sup> See id.; 47 C.F.R. § 51.317.

new entrant actually desires a network element, while ensuring that new entrants will obtain necessary network elements.

**VI. THE FCC SHOULD NOT ALLOW BOCs TO CARRY PACKET-SWITCHED TRAFFIC ACROSS CURRENT LATA BOUNDARIES. IF THE FCC DOES ALLOW THIS, IT SHOULD REQUIRE THE REQUESTING BOC TO DEMONSTRATE ITS COMMITMENT TO SPECIFIC ROLLOUTS OF SERVICE IN RURAL AREAS.**

The FCC in its NPRM seeks comment on the criteria that it should use to evaluate LATA boundary modification requests that would allow BOCs to carry packet-switched traffic across current LATA boundaries for the purpose of providing high-speed connections to nearby network access points. The FCC tentatively concludes that some modification of LATA boundaries may be necessary to provide subscribers in rural areas with the same type of access to the Internet as other subscribers throughout the nation.<sup>25</sup>

The Department disagrees with the FCC's tentative conclusion. The Department opposes granting a BOC the authority to cross LATA boundaries before it meets the requirements set forth in section 271 of the Communications Act of 1934 for BOC entry into in-region, interLATA services. The BOCs have not demonstrated that such modification of LATA boundaries will improve rural access to the Internet or rural high-speed access to the Internet. For example, the illustrations in U S WEST's earlier Petition for Relief in this proceeding demonstrate that U S WEST and other providers have placed their backbone networks for

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<sup>25</sup> NPRM at ¶¶ 193-94.



advanced services in population centers rather than rural areas.<sup>26</sup> Thus, there is no historical evidence that the BOCs would find it profitable to place advanced services facilities in rural areas or have any plans to do so. In fact, the FCC should consider the possibility that the BOCs' major interest is rather to offer their in-region customers access to a national backbone network in order to improve their ability to compete with other companies in providing advanced services in major population centers.

If the FCC adopts its tentative conclusion, the Department urges the FCC to deny such requests unless the BOC demonstrates its commitment to specific rollouts of service in the rural areas that are the basis of its requests for modifications of LATA boundaries. If a BOC requests a modification of LATA boundaries on the basis that such modification will allow the BOC to better serve rural areas, then the FCC should require a BOC to identify the specific rural areas that will benefit from such modification. The FCC should then require the BOC to commit to install advanced services facilities in those specific rural areas. Such a commitment should include, but not be limited to, a binding timetable for construction and operation of those advanced services facilities. The FCC should further require the BOC to explain how its plans would provide advanced services to that rural area at lower cost than is currently available, and commit to following through on the projected lower cost. If the BOC fails to meet its commitments, then its authority to cross LATA boundaries should be revoked.

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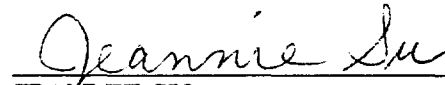
26 See Petition of U S WEST Communications, Inc., for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 (filed Feb. 25, 1998); Comments of Minnesota Department of Public Service in the Matter of Petition of U S WEST Communications, Inc., for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, at 8-10 (filed Apr. 6, 1998).

## CONCLUSION

Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services and of information services to all consumers, in all areas, both rural and urban. The Department thus supports specific modifications to the FCC's proposals that will encourage the development of competition in this increasingly important market. The Department urges the FCC not to exempt any advanced services incumbent LEC affiliate from nondominant regulation, at least not for a transition period until the various incumbent LEC corporate entities demonstrate that they are not granting one another any competitive advantage. The Department's experiences with U S WEST's offering of advanced services indicate that, absent careful oversight, U S WEST's various corporate sections will do their best to favor one another at the expense of competitors. The FCC should also continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services. In addition, the FCC should adopt some minimum pro-competitive restraints on joint marketing among affiliates, which state regulators could supplement as necessary to encourage and protect competition. Furthermore, transfers of customer accounts and CPNI from an incumbent LEC to its advanced services affiliate, as well as joint marketing, should be deemed to make that affiliate an assign of the incumbent LEC. Moreover, the Department generally supports the FCC's proposals to strengthen collocation and access to loop requirements for incumbent LECs, and to examine additional unbundling requirements. Finally, the FCC should not allow BOCs to carry packet-switched traffic across LATA boundaries; however, if the FCC does allow this, a BOC should be

required to demonstrate its commitment to specific rollouts of service in the rural areas that are the basis of its request for modification of LATA boundaries in order for its request to be granted. In all these matters, the FCC should deem any requirements it enacts as a minimum beyond which state agencies can impose additional requirements as necessary to advance competition in the advanced services and information services markets in their specific states.

Dated: September 25, 1998



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(651) 296-1410 (TTY)

ATTORNEY FOR THE MINNESOTA  
DEPARTMENT OF PUBLIC SERVICE

AG:150106 v1

## CERTIFICATE OF SERVICE

I, Jeannie Su, hereby certify that on this 24th day of September, 1998, I caused copies of the foregoing **Comments of the Minnesota Department of Public Service** to be served via federal express and/or U.S. Mail upon those persons listed below.

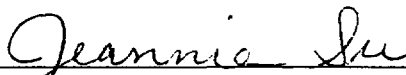
MAGALIE ROMAN SALAS  
OFFICE OF THE SECRETARY  
FEDERAL COMMUNICATIONS COMM'N  
ROOM 222  
1919 M ST N W  
WASHINGTON D C 20554  
(federal express)

JANICE MYLES  
COMMON CARRIER BUREAU  
POLICY & PROGRAM PLANNING DIV  
ROOM 544  
1919 M ST N W  
WASHINGTON D C 20554  
(federal express)

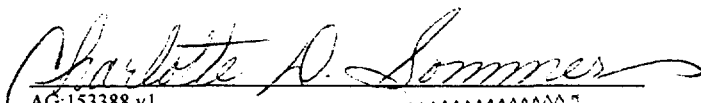
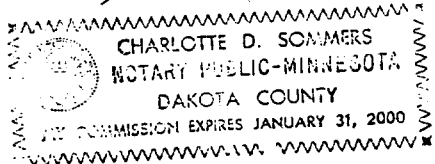
INTERNATIONAL TRANSCRIPTION  
SERVICES INC  
1231 20TH STREET N W  
WASHINGTON D C 20036  
(federal express)

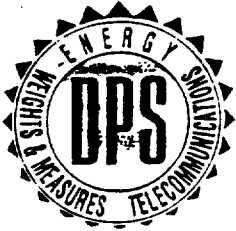
WILLIAM T LAKE  
JOHN H HARWOOD II  
JONATHAN J FRANKEL  
WILMER CUTLER & PICKERING  
2445 M ST N W  
WASHINGTON D C 20037  
(U.S. Mail)

ROBERT B McKENNA  
JEFFRY A BRUEGGMAN  
U S WEST INC  
1020 19TH ST N W  
WASHINGTON D C 20036  
(U.S. Mail)

  
JEANNIE SU

Subscribed and sworn to before me  
this 24th day of September 1998.

  
AG:153388 v1  




MINNESOTA  
DEPARTMENT OF  
PUBLIC SERVICE

**PUBLIC COPY**

September 10, 1998

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 East 7th Place, Suite 350  
St. Paul, Minnesota 55101

Re: Complaint of the Department of Public Service and the  
Office of the Attorney General  
Docket No. P421/EM-98-471

Dear Mr. Haar:

Enclosed please find copies of the complaint of the Department of Public Service and the Office of the Attorney General regarding the roll out of US WEST's MegaBit Services. A faxed copy of Mr. Mike Davis' affidavit is included with this letter. An original copy will be forwarded shortly.

Please contact me at 296-1483 if you have any questions regarding this complaint.

Sincerely,

ELLEN GAVIN  
ASSISTANT ATTORNEY GENERAL

EG/fh  
Enclosure

NEW  
AREA COD  
651  
14 of July 1998

STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION

Edward Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendraye  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation into  
U S WEST Communications, Inc.'s  
Provision of MegaBit Services

**COMPLAINT OF THE DEPARTMENT  
OF PUBLIC SERVICE AND THE  
OFFICE OF ATTORNEY GENERAL**

**Docket No. P421/EM-98-471**

**I. INTRODUCTION**

1. The Department of Public Service (Department) and the Office of Attorney General (OAG) bring this complaint against U S WEST Communications, Inc. (U S WEST) for offering its tariffed MegaBit services in a discriminatory manner in violation of Minn. Stat. § 237.09 and other sections of Minn. Stat. ch. 237, and in violation of state and federal requirements to offer services at a wholesale rate to resellers found at 47 U.S.C. 251 and Minn. Stat. § 121(5). The Department and the OAG request that the Commission provide relief by requiring U S WEST to take specific actions to ensure that independent internet service providers (ISPs) are treated in the same manner as its affiliate internet service provider U S WEST.NET. The Department and the OAG further request that the Commission require U S WEST to offer MegaBit services for resale.

2. The Department is represented in this Complaint by Ellen Gavin, Office of the Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101. The OAG is represented by Scott Wilensky, Office of the Attorney General-RUD, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101. The respondent is represented by Kevin Saville, U S WEST Communications Inc., Suite 390, 200 South 5th Street, Minneapolis, MN 55402.

## **II. JURISDICTION.**

3. The Commission has jurisdiction over the Complaint and authority to grant the relief requested herein under Minn. Stat. §§ 216A, 237.09, 237.121, 237.06. and 237.081.

## **III. U S WEST IS A MONOPOLY PROVIDER OF MEGABIT SERVICE IN ITS SERVICE TERRITORY.**

4. Under Minn. Stat. § 216A.07, the Department is charged with investigating and enforcing, among other things, Chapter 237 and Commission Orders made pursuant to that chapter. The Department's investigation into U S WEST's provision of MegaBit services has found that U S WEST is engaging in discriminatory behavior that is harming ratepayers.

5. Under Minn. Stat. § 8.33, the Attorney General represents residential and small business interests in public utility matters before the Commission. In this complaint, the Attorney General alleges that U S WEST is engaging in discriminatory behavior that is harming residential and small business consumers.

6. U S WEST is an Incumbent Local Exchange Company (ILEC) in the State of Minnesota. As an ILEC, U S WEST is the dominant provider in the provision of local exchange facilities in approximately 162 exchanges in the State, representing approximately 2.2 million access lines. In the Twin Cities Metropolitan Area (Metro), U S WEST has approximately 50 exchanges and 1.4 million access lines.

7. On April 13, 1998, U S WEST introduced MegaBit Service in Minnesota (effective date of MegaBit Tariff Filing). On April 22, 1998, U S WEST submitted revisions to the MegaBit Service by reducing non-recurring charges for the service. U S WEST submitted the MegaBit filing on April 3, 1998 under Minn. Stat. §§ 237.60, subd. 2(f) and 237.63, subd. 4(b).

8. MegaBit Service is a much anticipated service that allows simultaneous use of voice grade service--i.e., plain old telephone service (POTS), and high speed data service--i.e., Digital Subscriber Line (DSL) service over a single pair of copper wires. MegaBit Service allows end-use customers to transmit data at speeds between 5 times and 250 times faster than

conventional analog modems. The most anticipated use of MegaBit Service is to access the Internet through ISPs that support MegaBit Service.

9. The MegaBit Service involves two categories of services--MegaSubscriber service and MegaCentral service. The MegaSubscriber service is the "retail" service provided by U S WEST directly to U S WEST telephone subscribers (or end-users). There are six MegaSubscriber services which vary in speed from 256 kbps (bi-directional) to 7 Mbps receive/1Mbps send. The month-to-month rates for the six different MegaSubscriber services range from \$40.00 per month for the lowest speed (256 kbps) service, to \$875.00 per month for the highest speed (7 Mbps receive/1Mbps send) service. The installation charge for MegaSubscriber service is \$110.00. In addition, subscribers must purchase a \$295.00 modem from U S WEST. The total setup charge for MegaSubscriber Service is \$405.00.

10. The MegaCentral Service is a "hub" service provided by U S WEST to small businesses, corporations, or Internet Service Provider (ISPs) who wish to aggregate data transmissions from multiple MegaSubscribers. With MegaCentral Service, for example, ISPs can aggregate Internet traffic at a central office for its Internet customers who subscribe to the MegaSubscriber Service. The MegaCentral Service is available at two different speeds: 1.5 MegaBits per second (Mbps); and 3 Mbps-45Mbps at 3 Mbps increments.

11. In order to establish MegaCentral Service, the MegaCentral customer must purchase a MegaCentral Link to interconnect their facilities with U S WEST facilities. The MegaCentral Link is a type of Private-Line Transport. If a U S WEST-provided Private-Line Transport of 1.544 Mbps (DS1) or 45 Mbps (DS3) is used, it must be ordered and billed separately. MegaBit Tariff, Section 8, p. 9.

12. MegaCentral customers must also pay a non-recurring charge and a monthly rate for each Central Office Connecting Channel (COCC). A COCC provides the ongoing interconnection from a MegaCentral Access Link to a MegaCentral Port. The non-recurring COCC charge is \$20.00. The recurring COCC month-to month charge is \$5.00 per COCC for



1.5 Mbps speeds and \$10.00 per COCC for 3 to 45 Mbps speeds. MegaBit Tariff, Section 8, p. 13.

13. MegaCentral customers must also pay a non-recurring charge and a recurring charge for each MegaCentral Port. The MegaCentral Port is a port on the Asynchronous Transfer Mode (ATM) switching system. The non-recurring MegaCentral Port charge is \$500.00. The recurring MegaCentral month-to month charge is \$910.00 per port for 1.5 Mbps speeds, and \$1,456.00 per port for 3 to 45 Mbps speeds. MegaBit Tariff, Section 8, p. 13.

14. As described by U S WEST in its MegaBit filing:

[t]hese two categories correspond to the 'hub' and 'spoke' nature of the service architecture. The MegaCentral location is the hub (or host), and each MegaSubscriber is a spoke. One MegaCentral location will serve multiple MegaSubscribers. Each of the spoke connections must be associated with a host.

U S WEST April 3, 1998 MegaBit Filing, Exh. A, p. 1. Through this hub and spoke architecture, U S WEST controls all access points in the network and wields significant market power and influence.

#### **IV. MEGABIT SERVICE IS EXCLUSIVELY AN INTRASTATE TELECOMMUNICATIONS SERVICE.**

15. The Commission's recently adopted local competition rules define telecommunications service as follows:

"Telecommunications Service" means the offering of telecommunications under the commission's jurisdiction for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Minn. R. 7812.0100, subp. 47. The Commission's rules define "telecommunications" as follows:

"Telecommunications" means any transmission, between or among points as specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received.

Minn. R. 7812.0100, subp. 45. Thus, MegaBit services are appropriately classified and regulated as a telecommunications service under Minnesota law. U S WEST offers the service for a fee

directly to the public. In providing the MegaBit Service, U S WEST transmits information of the customer's choosing, between and among points specified by the MegaSubscriber customer, without change in the form or content of the information. The fact that the MegaBit Service is a high speed data service does not change the fact that it is a regulated telecommunications service.

16. All MegaSubscriber service is an intrastate service. MegaSubscriber customers have their local loops modified to carry high speed data to an internet access provider who must have a MegaCentral port in the same LATA as the MegaSubscriber customer because U S WEST cannot transport traffic across LATA boundaries. While almost all of these calls are local, some may involve intraLATA/intrastate toll calls. Calls to Internet Service Providers are completed by connecting with the ISP as no interstate access charges apply to ISPs since USWC does not provide any switching or local transport which routes the call beyond the dial-up number reached. Thus, MegaBit service does not have an interstate component.

#### **V. U S WEST'S DEPLOYMENT OF MEGABIT DISCRIMINATES IN FAVOR OF ITS AFFILIATE.**

17. On or about May 8, 1998, U S WEST began a MegaBit promotion in Minnesota providing customers who signed up with a free digital modem, U S WEST.NET internet access installation, and reduced rate set-up and training.<sup>1</sup>

18. At the time U S WEST offered this promotion, the only ISP whose MegaCentral was due to be installed was U S WEST.NET. Until an ISP's MegaCentral was in place, U S WEST did not permit its customers to take advantage of the promotion.

19. Under Minnesota law, U S WEST.NET is prohibited from engaging in discriminatory behavior in favor of its affiliated entities. Specifically, Minn. Stat. § 237.09, subd. 2 states:

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<sup>1</sup> U S WEST did not file this promotion with the Commission in violation of Minn. Stat. § 237.626. This statutory violation by U S WEST is the subject of a separate Department complaint. See Docket No. P421/C-98-997.

Subd. 2. Particular services. (a) A telephone company that offers or provides a service or services, service elements, features, or functionalities on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors. To the extent prohibited by the Federal Communications Commission or public utilities commission, a telephone company shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers. (Emphasis added).

20. The Commission has authority under Minnesota law to prohibit U S WEST from giving preferential treatment to itself or its affiliate in the provision of services.

21. Minnesota Statutes, section 237.121(2) prohibits U S WEST from:

intentionally impair[ing] the speed, quality, or efficiency of services, products, or facilities offered to a consumer under a tariff, contract, or price list; . . .

22. U S WEST knew, or should have known, that there was not sufficient capacity and facilities in place to assure that ISPs would be able to begin offering Internet access through U S WEST's MegaBit Service. At an August 5, 1998 public meeting of the Commission, several ISP's complained of difficulties in obtaining and establishing fully operational MegaCentral connections with U S WEST. Specifically, these customers stated that they have experienced delays and difficulties in obtaining MegaCentral Links (i.e., DS1 and DS3 private line transport) and MegaCentral Ports from U S WEST. U S WEST knew how many ISP customers it had in Minnesota and that it would need to provide them with DS1 and DS3 lines to utilize MegaCentral service. Yet, it chose not to keep the necessary lines in inventory to serve its ISP customers.

23. U S WEST.NET is an affiliate retail department that sells Internet access services to consumers. It has received more prompt installation of a MegaCentral and DS3 facilities than did competitive retail ISPs. At the same meeting, U S WEST acknowledged that U S WEST.NET, U S WEST's non-regulated ISP, had the first operational MegaCentral in the state of Minnesota, and that it was also the first to obtain a DS3 circuit connection.

24. Other ISPs claim to have made timely applications for MegaCentral service but did not become operational until after U S WEST.NET. U S WEST delayed the provisioning of

the facilities and equipment necessary for MegaCentral service for ISPs before and during the promotion. Some ISP customers had to wait throughout the promotion period to obtain DS-1 and DS-3 lines. This delay in service meant that many ISPs were unable to take advantage of U S WEST's promotion, since U S WEST would not permit a MegaSubscriber customer to obtain the benefits of the promotion if the customer's ISP's MegaCentral was pending. See Attachment A, Exhibits 3 and 7.

25. The overwhelming majority of customers who participated in U S WEST's promotion went to U S WEST.NET as their internet service provider. See Attachment A, Exhibits 12 and 13.

26. U S WEST has no written agreement with U S WEST.NET that sets forth the time-frames in which these services will be delivered. Because DS3 service is typically individually contracted, there is a greater potential for U S WEST to favor its own affiliate on installation issues.

#### **VI. U S WEST'S BUSINESS OFFICE PRACTICES FURTHER THE PREFERENTIAL TREATMENT OF ITS AFFILIATES.**

27. U S WEST's business office ordering process is biased in favor of U S WEST's own Internet service provided under the U S WEST.NET name.

28. For example, U S WEST has established a toll-free 1-888 number for potential MegaSubscribers to call to order service (1-888-MEGA-USW). The voice response unit (VRU) that answers the call provides customers with several options to choose from with their touch tone phone. The message states:

Thank you for calling about MegaBit Services from U S WEST. For MegaBit Services with U S WEST.NET, press 1. For MegaBit Services with any other Internet Service Access Provider, Press 2 . . . .

This type of recording gives an unfair advantage to U S WEST.NET service over competitive ISPs, because the customer is calling U S WEST for MegaBit service, not U S WEST's Internet Service. The prompt directs them to press 1 and the reference to U S WEST.NET does not distinguish U S WEST.NET from U S WEST in any meaningful manner that would be likely to

prevent customers from pressing Option #1 as they are attempting to call U S WEST. Further, because the option to choose MegaBit Service with U S WEST.NET is the first option in the queue, customers who want U S WEST's MegaBit Service have no need to listen further.

29. This is further evidenced by the results of the initial promotion of MegaBit Service referenced in Paragraph 25 and the number of callers who chose to press 1 compared to the number of callers who pressed 2. See Attachment A, Exhibit 10.

30. U S WEST's web site markets MegaBit Service by promoting the 1-888-MEGA-USW telephone number. U S WEST markets the availability of U S WEST.NET on its MegaBit web site. The U S WEST regulated company's web site is simply another point of access for customers to order U S WEST's regulated products and services and thus like its business office should be competitively neutral.

31. On January 12, 1996, the Commission issued its ORDER ESTABLISHING U S WEST BUSINESS PRACTICES FOR INTRALATA PRESUBSCRIPTION, Docket No. P 999/CI-87-697. In that Order, the Commission established conditions on U S WEST related to its marketing of intraLATA long distance service.

32. As part of its investigation into U S WEST's business practices related to marketing intraLATA service, the Commission concluded that U S WEST had an unfair advantage over its competitor in signing up new customers who call to establish telephone service with U S WEST. In its Order, the Commission stated:

The Commission agrees with commenting parties that U S WEST must not use its position as the dominant carrier to achieve a superior competitive status in the opening intraLATA toll market. When a customer contacts U S WEST seeking new service, or for any other reason that relates to U S WEST's position as the customer's local service provider, U S WEST's customer service representatives should not influence the customer's choice of intraLATA toll carrier or persuade the customer to subscribe to U S WEST.

January 12, 1996 Order, Docket No. P-999/CI-87-697, p. 6.

33. As a result of the Commission's investigation and analysis, the Commission ordered U S WEST to do the following:

When U S WEST's customers contact the Company for new service, transfers of service, or stand-alone PIC changes, the Company's service representatives must respond in a competitively neutral fashion. When the customer contact relates to U S WEST's role as the customer's local service provider, the service representatives must not use the contact to influence the customer's choice of intraLATA toll provider. U S WEST will be required to submit for Commission or Staff approval a proposed script which its customer service representatives will follow when contacted by a customer seeking new service, transfers of service, or stand-alone PIC changes. The script should cover the Company's proposed method of informing the customer regarding intraLATA toll carrier choice. The script must not contain language which seeks to leverage U S WEST's dominant local carrier position into competitive advantage in the intraLATA toll arena.

Id., p. 15, Ordering Paragraph 4.

34. Like the intraLATA toll market, U S WEST is in a similar dominant monopoly position in the provision of its MegaBit Service. In the toll market, U S WEST is the dominant monopoly provider of 1+ equal access. As a result, many long distance customers contact U S WEST to choose a Primary Interexchange Carrier (long distance company). U S WEST controls the actual PIC change process from beginning to end. Only U S WEST can process PIC requests.

31. Like the toll market, many MegaSubscriber customers contact U S WEST to subscribe to MegaSubscriber Service and choose a MegaCentral Destination Channel. Because U S WEST has promoted a special number, 1-888-MEGA-USW to order MegaSubscriber service, this is normally the customer's first point of contact to order this regulated service. Only U S WEST provides MegaSubscriber Service. As with the toll market, only U S WEST can route customers to a MegaCentral customer, similar to routing subscribers to different long distance providers through the PIC change process. U S WEST controls the selection of a MegaCentral destination by MegaSubscribers. Only U S WEST can process MegaSubscriber change request orders. The MegaSubscriber change charge is \$45.00. Thus, every time a MegaSubscriber customer chooses a different ISP (i.e., a different Destination Channel), U S WEST will charge the customer \$45.00. In contrast, the tariffed PIC change charge is \$5.00.

35. The 1-888-MEGA-USW number is the number U S WEST, the regulated entity, has directed customers to call to order MegaSubscriber Service. Thus, this number serves as the U S WEST business office and should comply with the Commission's business office practices for competitive neutrality. The voice recording improperly directs customers to U S WEST's non-regulated Internet Service through U S WEST.NET when customers call to purchase a regulated service.

36. U S WEST has indicated that it will create two toll-free numbers, one for U S WEST.NET and another number for all other ISP's. A two-number system is discriminatory as it takes U S WEST's business office and makes it the same location where U S WEST.NET is marketed. The business office should provide competitively neutral access to U S WEST's MegaBit Service. This could, for example, be accomplished by asking for the following information:

- a. if you currently have an Internet Service provider, press 1;
- b. if you do not have an Internet Service provider, press 2;
- c. customers pressing #1 will be informed of whether their current ISP has a MegaCentral;
- d. if the current ISP does not have a MegaCentral or the customer presses #2, the customer shall be informed of ISPs with MegaCentrals in a manner consistent with intraLATA toll restrictions.

37. The adoption of a two-number marketing scheme would create further blurring of business office practices in marketing U S WEST's regulated MegaBit service and U S WEST's unregulated affiliate, U S WEST.NET. The 1-800-MEGA-USW number is now known to consumers wishing to order MegaBit service. Thus, the Commission should assure that the 1-888 MEGA-USW number provides a competitively neutral response to customers regarding selection of Internet service providers.

## **VII. SERVICE QUALITY STANDARDS AND CUSTOMER REMEDIES REQUIRED.**

38. Under Minnesota law, U S WEST is required to provide adequate service at fair and reasonable rates. Specifically, Minn. Stat. § 237.06 states, in pertinent part:

Reasonable rates and service. It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful.

39. As stated above, MegaBit Service is a regulated telecommunications service being offered by U S WEST under the Advanced Communications Services Price List filed with the Commission. With respect to installation standards, the terms contained in the Price List state, in pertinent part:

The furnishing of MegaBit Services requires certain physical arrangements of facilities of the Company and is subject to the availability of such facilities, as set forth in Section 2.1.2. (MegaBit Tariff, Section 8.2.B, p. 6).

40. Section 2.1.2 of U S WEST's Price List relates to general limitations of installation and restoration of Advanced Communications services. This Section cross-references the Access Service Tariff, Section 13, concerning the Telecommunications Service Priority (TSP) system. The TSP system refers to restoration of existing services but not installation of new services. Thus, the MegaBit Service Price List does not provide any specificity regarding standards related to the timeliness of installing MegaSubscriber or MegaCentral Service.

41. In fact, no provision in Section 2 of the Advanced Communications Services Price List (General Regulations) or Section 8 of the Advanced Communications Services Price List (MegaBit services) service standards relate to the timeliness of installing MegaSubscriber or MegaCentral Service. In addition, there are no terms in the MegaBit Service Price List related to customer specific remedies for the Company's failure to install MegaBit services in a timely manner.

42. The fact that the MegaBit Price List does not contain specific service standards or customer remedies can lead to favoring of U S WEST's non-regulated Internet Service by



assuring that it receives preferential treatment in the ordering and provisioning process. There is no mechanism to assure that an ISP who places a timely order will receive service as promptly as U S WEST's affiliate.

43. The monopoly telephone company's ATM network is the transport vehicle for all high-speed service in U S WEST territory. As such, capacity on that backbone is essential to assure that the "last mile" speeds offered can be achieved.

44. Monitoring and reporting of capacity needs and potential constraints, whether they be on the port (switch side) or in the shared transport vehicle, is vital to all MegaCentral customers. U S WEST has not provided its ISP customers with information they need about the capacity in U S WEST's central offices to plan their marketing of MegaSubscriber service. ISPs need to know how many circuits, ports and DSLAMs are available in each central office so they can market effectively.

#### **VIII. INTERNET SLAMMING.**

45. ISPs have also complained that some MegaSubscriber customers have been "slammed" by U S WEST to U S WEST.NET service, in spite of the customers choosing another ISP and even when the ISP has placed the order for the customer. See Attachment B. Slamming is typically referred to as the unauthorized switching of a person's long distance service from one long distance provider to another provider. In this context, slamming occurs by the unauthorized switching of a MegaSubscriber's designated MegaCentral provider. In other words, the customer's Internet Service Provider is switched without the customer's authorization.

46. U S WEST has not disputed that certain unauthorized changes have occurred.

#### **IX. RESALE.**

47. U S WEST refuses to provide MegaBit services at a wholesale price for resellers.

48. The Telecommunications Act of 1996 requires U S WEST "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 USC 251(c)(4). State law also requires U S WEST to resell its services. Minn. Stat. § 237.121(5).

## **X. REQUEST FOR RELIEF.**

Based on the foregoing allegations, the Department of Public Service and the Office of Attorney General seek the following relief:

### **1. Business Office Practices.**

a. U S WEST shall utilize a competitively neutral message in advertising and promoting DSL Service as described herein. If the Commission believes U S WEST can comply with this directive by establishing two toll-free numbers, the current toll-free number, 1-888-MEGA-USW, should be assigned to independent Internet Service providers, not U S WEST.NET.

b. U S WEST shall not engage in cross-selling its Internet Service to MegaSubscribers who are (1) already signed up with a DSL-compatible ISP, and/or (2) MegaSubscribers who move from one location to another.

### **2. Discrimination.**

The Commission should either determine that U S WEST unlawfully favored its affiliate or alternatively order further investigation of the facts and circumstances surrounding installation of U S WEST.NET's and other ISP's MegaCentrals and take appropriate remedial action, and refer any violation of rule or statute to the Attorney General.

On a prospective basis, the Commission should require that U S WEST detail procedures that specify how time-frames for installations will be treated in a non-discriminatory manner; how service quality will be insured, how and to whom information on capacity will be reported; how deployment of technicians occurs; in what manner its orders are placed and filled; and other appropriate matters.

### **3. Monitoring and Reporting.**

The Commission should require U S WEST to develop quality reports on capacity and availability of facilities related to MegaBit Service. Information on the capacity of the network should be provided to all ISPs on a regular basis and may include:

- a. availability of MegaCentral/MegaSubscriber ports in various central offices;
- b. regular periodic reporting (e.g. daily, hourly or weekly) of transmission speeds on the ATM network; and
- c. facilities in place for DS1/DS3 connections to various MegaCentral locations.

**4. Internet Slamming.**

The Commission should require U S WEST to establish verification procedures to assure that there is no unauthorized change in a customer's Internet Service provider.

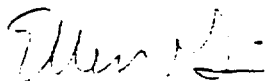
**5. Resale.**

The Commission should require U S WEST to file a tariff to provide MegaBit services at wholesale prices.

**6. Promotion.**

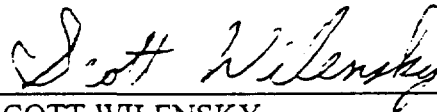
The Commission should prohibit U S WEST from conducting another promotion of MegaBit services until U S WEST changes its business office practices to assure competitive neutrality.

Dated: September 10, 1998.



ELLEN GAVIN  
Assistant Attorney General  
Attorney Reg. No. 158574

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445 Minnesota Street  
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(651) 296-1483  
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OFFICE OF THE ATTORNEY GENERAL-RUD



MINNESOTA  
DEPARTMENT OF  
PUBLIC SERVICE

AFFIDAVIT OF JOHN F. GRINAGER

I, John F. Grinager, being duly sworn and under oath, state as follows:

1. I am a Public Utility Rate Analyst for the Minnesota Department of Public Service. My business address is Metro Square Building, 121 South 7th Place East, Suite 200, St. Paul, Minnesota 55101.
2. I am submitting this affidavit in support of the Department's Complaint filed before the Minnesota Public Utilities Commission in Re: Complaint of the Department of Public Service and the Office of Attorney General vs. U S WEST Communications, Inc. (Docket No. P421/C-98-471) My affidavit specifically addresses U S WEST's violations of Minn. Stat § 237.081, § 237.09 and § 237.121 in its roll out of its MegaBit Services.
3. On April 3, 1998, U S WEST filed its MegaBit (DSL-Digital Subscriber Line) Services tariff with the Commission with an effective date of April 13, 1998. Among other uses, MegaBit Services provides for access to the internet at speeds more than 5 times that available via current 56 kbps modems. The Service consists of two parts, MegaSubscriber and MegaCentral. MegaSubscriber provides a connection from the end use customer's premises to the local U S WEST central office. MegaCentral provides a connection from the central office via U S WEST's ATM (Asynchronous Transfer Mode) network to the internet service provider (ISP). In order for an end use customer to achieve fast access to the internet, they would have to subscribe both to U S WEST's MegaSubscriber service and subscribe to an internet service provided by an internet service provider who in turn had subscribed to MegaCentral service.
4. In response to concerns of the Department regarding the ordering and installation process, U S WEST provided a statement that U S WEST had not accepted orders for U S WEST MegaCentral service until the effective date of the tariff. This statement made it clear that this applied specifically to U S WEST.net, as well as to other ISPs. (See Exhibit 1.)
5. At the time of receipt of this letter, I believed that U S WEST was acting in a manner that was consistent with the guidelines included in the letter. However, later I learned that U S WEST had accepted two orders prior to

NEW  
AREA CO  
651  
1st of July 1998

the effective date of the tariff. When I use the term "accept an order," I am interpreting this to be the acceptance of an order for processing by U S WEST staff. The ordering process for MegaCentrals is described in Exhibit 2.

The orders which were accepted for processing prior to the effective date of the tariff included those for U S WEST.net Minneapolis and U S WEST.net Rochester. The executive summaries for these two orders were completed on March 27 and April 6, 1998, respectively. (See Exhibit 3.) I also learned that even though another ISP, Sihope Communications, had tried to order the service before the effective tariff date, U S WEST delayed processing the order until after the service was tariffed. (See Exhibits 4 and 5.)

6. Not only did U S WEST Communications accept orders prior to tariffing the service from its affiliate, it also provisioned its affiliate, U S WEST.net Minneapolis, with facilities much sooner than it did for independent providers. U S WEST Communications provided the necessary facilities for U S WEST.net in Minneapolis to provide MegaBit service on or about May 8 or May 11, 1998. (See Exhibit 3 and 6.) Sihope Communications, a company which had to wait for its order to be processed until after the service was tariffed, was not up and running until May 29, 1998. (See Attachment B.)
7. On or about May 8, 1998, and concurrent with its installation at U S WEST.net, U S WEST Communications initiated a promotion program which provided free customer CPE (customer premises equipment) to end use customers. (See Exhibit 6.) The customers of ISPs which had ordered MegaCentral service, but which did not yet have the service installed, were not eligible to participate in the promotion unless they switched to an ISP which had MegaCentral service. (See Exhibit 7.) Therefore, end use customers who desired to subscribe to MegaBit service in May, and who wanted to receive the free customer CPE offered by U S WEST Communications, were forced to switch to an internet provider with installed MegaCentral service. Until the end of May, this left U S WEST.net and possibly one independent ISP as the only options. (See Exhibit 3.)
8. In addition to delayed entry by other ISPs, U S WEST Communications provided its affiliate, U S WEST Interprise America (provider of U S WEST.net internet services), with yet another advantage to compete against independent ISPs. In direct mailings to end use customers, U S WEST Communications provided a toll free number to order MegaBit service. (See Exhibit 8.) Once customers reached this number, they were given two options to continue the ordering process. Option 1 was to order MegaBit service as provided in conjunction with U S WEST.net. Option 2 enabled customers to order MegaBit service as provide in conjunction with other

internet service providers. (See Exhibit 9.) Of \*\*\*PROPRIETARY\*\*\* customers who responded to the 888 number for the 14 state U S WEST region, \*\*\*PROPRIETARY\*\*\* chose option #1. (See Exhibit 10.) The overwhelming response to Option No. 1 suggests that the ordering system itself discriminates in favor of U S WEST.net to the detriment of other ISPs. U S WEST is now considering its proposal to provide separate 800 numbers for U S WEST.net and other ISPs, but has not yet provided the details of the proposal. (See Exhibit 11.)

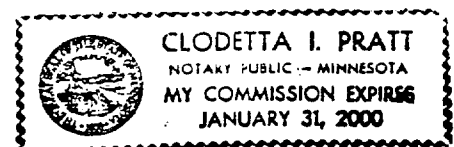
9. The delayed entry of competitors, described above, combined with U S WEST's biased ordering process made switching to U S WEST.net an attractive option for end users to switch their service to U S WEST.net. Of the \*\*\*PROPRIETARY\*\*\* customers who participated in the promotion, (\*\*\*PROPRIETARY\*\*\* chose U S WEST.net as their ISP. (See Exhibits 12 and 13.)
10. U S WEST states in Information Request Response No. 15 that it will not provide MegaBit services for resale. (See Exhibit 14.)
11. A DSLAM is equipment used to separate analog and digital signals and must be placed at the central office in order to provide mega-subscriber service. Without sufficient capacity in place at a central office, an end user is not able to connect to their ISP with a DSL connection. ISPs have informed me that they need information regarding the placement of equipment such as DSLAMs to plan marketing and that U S WEST has not provided the information required.
12. U S WEST Communications has slammed ISP customers and directed them to its affiliate, U S WEST.net, as admitted by U S WEST representatives during a "Franklin Forum" with ISPs. (Also see Attachment B of Complaint.) It is my understanding that once a customer changes internet service providers that in most cases, they must change their e-mail address. Therefore, once a customer has changed ISPs, it may be very inconvenient to change back to his or her original provider.

*John A. Thompson*

Subscribed and sworn to before me

this 10<sup>th</sup> day of September, 1998

*Clodetta I. Pratt*



JUN - 8 1998

Mr. John Grinager  
Minnesota Department of Public Service  
Suite 200  
121 Seventh Place East  
St. Paul, Minnesota 55101-2145  
June 8, 1998

Dear Mr. Grinager,

This letter is being written in order to comment on the concerns expressed in memorandums received by you from Carlos Gutierrez, Mike O'Connor, and Jeff Altum. For ease of understanding, I will follow the order of questions in each of the respective memos, starting with the ones from **Carlos Gutierrez**:

1. Non-recurring charges were reduced from the original filing in Minnesota. The non-recurring charge for the MegaSubscriber access link was reduced from \$145.00 to \$110.00. The MegaSubscriber change charge was reduced from \$75.00 to \$45.00.
2. In Minnesota, we will consider providing a one-time waiver of the MegaScriber change charge through 1998, but are not planning to do so at this time. We feel that lowering the non-recurring rates is sufficient.
3. Since the MegaBit tariff is already effective in Minnesota, we cannot introduce it in two phases. However, to address the concern of timing of the MegaCentral versus MegaSubscriber orders, USWC is not entering orders into the Service Order System for MegaSubscribers until the associated MegaCentral order is completed. This procedure is true for all ISPs. Also, any orders for MegaCentral were accepted on the effective date of the tariff for all ISPs, including USWEST.NET, and no sooner.
4. The issue of providing a list of ISPs is under consideration. U S WEST will not take the responsibility of initiating or maintaining a list of all ISPs, since some would have no relationship to U S WEST. U S WEST is developing a Web site listing those ISPs who are subscribing to the MegaCentral service. I am uncertain at this time as to what provision there would be for those interested parties who would not have access to the Web site. The Web site is not planned to be permanent at this time.
5. As we discussed, U S WEST is taking precautions to not give undue advantage to the USWEST.NET service. Calls from parties interested in the MegaBit service are accepted by a third party who is contracted specifically to accept calls on the published 800 number for MegaBit Service. Calls are accepted if they come into the normal Business and Residence Business Offices and specific Marketing Account Teams. There is a specific script (see Attachment 1) which the contracted third party must follow.

Although there is not a specific script for the Business Office and Marketing Teams, their Methods and Procedures, as well as training information, clearly state that care must be given not to give undue advantage to USWEST.NET.

The intent of U S WEST is that calls regarding MegaBit Service will come into the 800 published number for MegaBit Service. A Voice Response Unit (VRU) is being set up so that when a customer calls in they can select two options from a menu. The options allow selection of MegaBit Services and USW.NET or MegaBit Services and another Internet Services Provider. If the latter is selected, the call is directed to a specially trained team of sales consultants. The ISP Sales and Service Center is working towards providing a Safe Harbor which will allow ISPs and their end-users to call into that Center directly.

In answer to your question as to which entities are regulated and which are not; the Business Offices are regulated; the Marketing Account Teams are primarily unregulated (a few members are regulated depending on job function), and the third party contracted solely to respond to MegaBit 800 calls is contracted through Enterprise America, which is an unregulated subsidiary of USWEST Communications Group, Inc. The ISP Sales and Service Center is regulated.

6. See answer to 4.

7. U S WEST will not attempt to sell our Internet service to existing MegaBit Service customers who subscribe to the Internet service of another Internet Service Provider when such customers call to place an order to move their service from one address to another. When someone different than the customer requests a change of providers, U S WEST must receive a letter of authorization before changing the customer's Internet Service Provider.

8. There is a loop-qualification tool in place, which provides a response as to whether or not a loop qualifies; if not; why not; and if so; at what rate. If a loop does not qualify solely due to the existence of load coils or bridge taps, under normal circumstances U S WEST will remove them.

9. See answer to 8.

10. In order to comply with FCC Rules, U S WEST is required to track and account for all costs and expenses for basic services (regulated) versus enhanced services, customer premises equipment, and inside wire (unregulated). No subsidization is allowed for unregulated services from basic service ratepayers.

Regarding the memo from Carlos Gutierrez discussing the Oregon PUC action, I have addressed all issues mentioned except the concern about the MegaBit modems only being available from U S WEST. These modems are also available from Cisco (who acquired NetSpeed). In addition, ISPs who have letters of authorization may purchase DSL modems from U S WEST on behalf of their end-users. U S WEST will ship the DSL modems to end-user subscribers.



Comments addressed to the **Mike O'Connor** memorandum:

1. See answers to above 3., 4., and 5.
2. U S WEST's handling of CPNI (Customary Proprietary Network Information) is mandated through the FCC. Customers ultimately have the choice as to which service providers can access U S WEST record information specific to their accounts. The state of Washington has specific CPNI rulemaking under way.
3. See answers to above 1. and 2.
4. See answer to above 3.
5. The ISP Sales and Service Center is specifically set up to handle orders and service requests from ISPs. I am attaching a policy statement regarding non-discriminatory treatment of customers on the part of U S WEST. (Per DPS request)
6. A part of the service offering of MegaBit Services includes installation at the customer premises by a third party. This packaging was arranged through Interprise America, which is unregulated. The intent is to provide one technician who can address all of the MegaBit issues at the customer premise.
7. The specifications required of an ISP who wishes to subscribe to MegaCentral Service are the same regardless of who they are. The requirement is that they purchase a DS1, DS3, or use an available channel on existing ATM-Cell Relay service from the ISP site to a DSL equipped Central Office. The equipment at the ISP site must be RFC 1483 compliant. The service level is dependent on which of the three transport options (DS1, DS3, or Cell Relay Optical Access Link) the ISP chooses.
8. The U S WEST ATM-Cell Relay is an approved service. A part of the tariff filing included a cost study, just as any other service does. The cost of the Cell Relay network is borne by those customers who choose to purchase the service.

Comments addressed to the **Jeff Altom** memo:

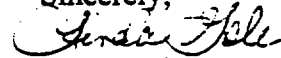
1. See answer to above .8 (Carlos memo).  
An additional comment regarding the inability of MegaBit Service to work over digital loop carriers is that U S WEST plans to provide this capability as soon as it is feasibly available to offer.
2. See answer to above .5 (Carlos memo).

In response to your question regarding U S WEST involvement in Working Groups or Standards Bodies, U S WEST is participating in the UAWG (Universal ADSL Working Group) which is a consortium of interested vendors working toward standardization.

John, I believe that all of the concerns have been addressed. If you feel a concern has not been adequately addressed or have additional questions, please call me.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Gale".

Linda Gale

Regulatory Manager

**MEMO**

**DATE:** 6/2/98

**TO:** The Sutherland Group - All Sutherland inbound reps handling calls for customers of ISPs and ISPs

**FROM:** Chris Hudson, U S WEST Enterprise

**RE:** Scripting for calls for customers of ISPs and ISPs

*Customer Calls 1-888-MEGAUSW (1-888-634-2879), 1-800-DATA-USW, etc.*

1. Sutherland Consultant answers:

2a. Thank you for calling to inquire about MegaBit Services from U S West. This is \_\_\_\_\_ (rep provides name) to whom am I speaking?

2b. Hi \_\_\_\_\_ (name of caller) may I please get your area code and telephone number so that I can give you the correct information for your area? Sutherland Representative will enter number into FACCHK (Facilities Check) database at this time. Also request address, zip, and company name at this time.

If the customer's number is out of U S WEST 14-state region or out of the in-region area where Megabit Services is currently offered, or if their loop is not qualified move to section 8.

If customer does not wish to provide this information, simply move to the next question.

If customer is in a service area and their line is qualified, move to the next section.

3. What prompted your call about Megabit Services today? Listen to customers needs.

In order to make sure I am giving you accurate information I need to ask you a few questions.

4. What Internet Service Provider would you like to connect to?

I am currently using \_\_\_\_\_.

Great - I will now check to see if your ISP supports Megabit Services.

If ISP is provisioned with MegaCentral, move to question 5d.

If customers ISP is not provisioned with MegaCentral please give them the following options:

5a. I'm sorry but \_\_\_\_ does not support MegaBit Services. We recommend you contact your ISP to see if they will be supporting Megabit Services soon. You can also find a complete listing of ISPs in the yellow pages and many of them do support Megabit Services. [If customer asks about USWEST.net - transfer caller to general Megabit inbound group.] - Tell customer - let me transfer you to a group that handles that service.

5d. Procedure for caller who is a customer of an ISP that is provisioned with MegaCentral: Please explain unbundled pricing and installation for Megaline. To place order - use paper ordering process and fax order to the ISP ordering group.

**Installation:** Installation will include the mode, NIC card if required, and NIC card software. **Reminder: Customer Must Sign Up for a MINIMUM 12 months of Service for promo offers!!** Estimated delivery interval is 15 days from order confirmation date.

6. Ask about the customer's PC hardware configuration:

What kind of Internet browser software do you use? \_\_\_\_\_. If no Internet browser software, "Does your PC have:"

\_\_\_\_\_ 486 Processor

\_\_\_\_\_ 33 Megahertz

\_\_\_\_\_ 8 Megabytes of RAM or 16 Megabytes of RAM using USWEST.net for Internet access.

\_\_\_\_\_ CD ROM?

\_\_\_\_\_ 20 Megabyte hard drive?

\_\_\_\_\_ Macintosh model?

If customer is not familiar with their PC - move to question 7. If the customer does not meet the PC Hardware requirements and is not willing to upgrade, skip to step 8.

7. I can place an order for your Megaline Service and the due date would be 15 working days from today.

IF YES, place paper order and fax to night-order group. Thank you for your order!

8. IF NO, is there anything else I can help you with?

IF NO, thank you for calling

9. I'm sorry but Megabit Services is not available in your area. I would be happy to answer any questions you have about the service. Can we call you when Megabit Services or a similar solution becomes available in your area?

\_\_\_\_yes \_\_\_\_no

Thank you for your call today. We will notify you when your line becomes qualified for the service. Feel free to check back periodically and check out our web site [www.megaspeed.com](http://www.megaspeed.com)

## Attachment 2

### Statute 237.09 Discrimination Prohibited.

Subdivision 2. Particular Services. (a) A telephone company that offers or provides a service or services, service elements, features, or functionalities on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors. To the extent prohibited by the Federal Communications Commission or public utilities commission, a telephone company shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

State Of Minnesota  
Department of Public Service  
INFORMATION REQUEST

P421/EM-98-471

Information Requested From: U S WEST Communications, Inc.

Information Requested By: Grinager, John

Date Requested: 07/14/98

Date Response Due: 07/23/98

REQUEST:

Please explain the ordering process used by U S WEST by which it obtained signed contracts for Megacentral service from ISPs and other customers. Please explain any differences between this process and the process used to obtain contracts for other services sold to ISPs.

RESPONSE:

Orders for any MegaCentral, whether for a corporate host, an ISP, or USWEST.net, go through the same process.

- . The sales channel prepares an Executive Summary and forwards to the MegaBit or ATM Product Manager for approval. (DS1 MegaCentrals are approved within the MegaBit Product team, DS3 and OAL MegaCentrals are approved within the ATM Product team.)
- . The approved (or rejected) Exec Summary is returned to the sales channel.
- . The sales channel goes to Contract Development services for contract preparation.
- . Contract is delivered to the customer for signature.
- . When signed contract is returned, the order form is completed and sent to Enterprise for order issuance and project tracking.
- . The MegaCentral is listed in the Web Ordering Tool as soon as the signed contract and completed order form is received in the Enterprise Center, and the DAOS has obtained ATM switch CFA information (about 1-2 days after the order form is received.)
- . A DS1 MegaCentral is project managed by an Account Consultant in the Enterprise center. A DS3 or OAL MegaCentral is project managed by an Enterprise Project Leader, usually located in a city near the customer's location.

I am not aware of any differences between the way a MegaCentral order is processed and any other service, with the exception that there are many U S WEST services that do not require the Executive Summary (ES) and funding process. The ES is required for all TLS, ATM, and MegaCentral services. A similar process for funding authorization is required for Centrex Custom, SHARP/SHNS and all other fiber based services.

Respondent: John Lee  
Title: Manager  
Department: Enterprise  
Telephone: 303-293-6448

To: gajohns@uswest.com  
From: Mike Davis <miked@sihope.com>  
Subject: Orders and Such...  
Cc:  
Bcc:  
Attached:

Hi Gary,

First - the good news -

1. Please place an order for MegaCentral service delivered via a DS1 as soon as possible.
2. Please place an order for a Point to Point T1 from Sihope to Vector Internet Services - Please contact them at 288-0880 for their details. I would like to have this in place by the end of April.
3. I need to order an additional pots line - please call me for details.

Second - The praise :)

Gary,

I have never been more please with the effort and attention that I receive from you regarding our service from US West - you have helped me battle the "regular" US west folks that actually prevent me from running my business. I would like to thank you for that... I would also like to thank you for being there - even via pager - 24 hours a day....I hope I haven't abused that :) - Also - Please let everyone know - that I will fight loud and long to keep you as my rep - I have developed a trust in you ( and thru you - US West ) and feel that a nightmare of problems would develop if you ever switched me to another rep.

Third - The bad stuff....

In the last two months - US West has cause severe damage to my client base. During the purchase of an ISP, improper rollover programming caused some 300+ clients to receive busy signals when there were none. This caused many people to leave our service before they even had a chance to experience it. I cannot stress how significant a customer is to us.. It is not just a monthly fee - it is years of monthly fees that this cost us. When we took over an ISP in the past, we waited weeks before even telling the customers that they were being served by a new company - instead - because of the busy signals - they called us complaining - loudly...

I also had ordered a Frame Relay T1 circuit that was not delivered in a timely fashion and the order was cancelled. At least a year (per contract) of revenue was lost because of this. I understand that Gary worked as hard as he could on all of my orders, however, when understaffed, the blame cannot be place on Gary, but the company..

I understand - per tariff - that you cannot adjust my bills - but you do have some flexibility on the installation charges - therefore - I would like to request that US West waive my installation charges for the last 16 POTS lines that I installed as well as the install charges on these new orders. I feel that this is the least you can do.

I have been hounded by OCI requesting that I switch all of my circuits to them - To date - they appear to be able to deliver on their technical promises. I wonder if they can survive the long haul - and if they can take care of the customer - however - the cost savings are enormous.

I urge you to show me that US West is truly my partner and wants to keep my business..

Thank you for your attention to these matters...

---

Docket No P421/EM-98-471  
Exhibit No. 4



Gary Johnson, 04:21 PM 4/16/98 , Yeah, boy.

---

Date: Thu, 16 Apr 1998 16:21:46 -0500  
From: gajohns@uswest.com (Gary Johnson)  
Reply-To: gajohns@uswest.com  
Organization: Internet Providers Group - U S WEST Communications  
X-Mailer: Mozilla 4.03 [en]C-USWC0720 (WinNT; U)  
To: "miked@sihope.com" <miked@sihope.com>  
Subject: Yeah, boy.

Well, here's the process to get a megaCentral DSL going:

1. Fill out an executive summary & fax it in. (Just did that for Sihope.)
2. DSL product manager looks it over & approves it.
3. Gary fills out official MegaCentral request form & faxes it in.
4. DSL account consultants send back a port CLLI code to the ATM machine and instigates a contract in legal dept.
5. Legal gets contract to Gary. Gary faxes to Mike. Mike signs & sends back.
6. Gary writes DSL order with CLLI info and sends that off.
7. Magic happens.
8. Around 5-4-98 we hope to see one of the first MegaCentrals in Minnesota go up at Sihope Communications.

Done all I can do until the product manager approves you as a MegaCentral.  
I expect to hear back tomorrow.

Gary Johnson

--

Account Manager II  
Internet Provider Group  
Business Enterprise Solutions  
U S WEST Communications  
800-879-6300 x2383

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Docket No P421/EM-98-471  
Exhibit No. 5

State Of Minnesota  
Department of Public Service  
INFORMATION REQUEST

P421/EM-98-471

Information Requested From: U S WEST Communications, Inc.

Information Requested By: Carlson, Crystal

Date Requested: 06/25/98

Date Response Due: 07/02/98

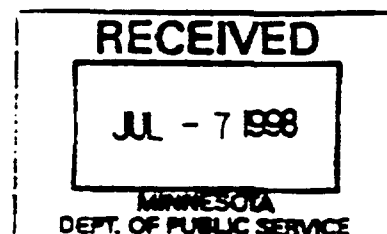
## REQUEST:

Is U S WEST currently promoting its Megabit services through the provision of free CPE to the first 1,000 customers to subscribe to MegaSubscriber service? If so, please describe how the free CPE is awarded. In your description, please include provisions for providing free CPE to customers who subscribe to independent ISPs who have ordered MegaCentral service, but have not yet had it installed.

## RESPONSE:

Customer Premises Equipment is not subject to regulation in the state of Minnesota. Therefore this question is beyond the scope of authority of the Department. Without waiving the foregoing objection, U S WEST states the promotion gives the first 1000 customers who sign up for MegaCentral service a free modem regardless of who that customer's ISP is. This offer is only good for current active MegaCentrals. Customers of "pending" Megacentrals are not eligible for the promo.

Response by: John Lee  
Title: Manager  
Department: INTERPRISE  
Telephone: 303-293-6448



Docket No P421/EM-98-471  
Exhibit No. 7

\*Megabit Services are available separately. Not all U S WEST Serving Offices are Megabit-equipped; availability also depends on your distance from the Serving Office and technical phone line qualifications. Offer expires 8/14/98. Additional set-up charges will apply. \*\*Manufacturers suggested retail price. Quantities are limited.  
©1998 U.S. WEST Communications, Inc.

State Of Minnesota  
Department of Public Service  
INFORMATION REQUEST

P421/EM-98-471

Information Requested From: U S WEST Communications, Inc.  
Information Requested By: Grinager, John  
Date Requested: 07/14/98  
Date Response Due: 07/23/98

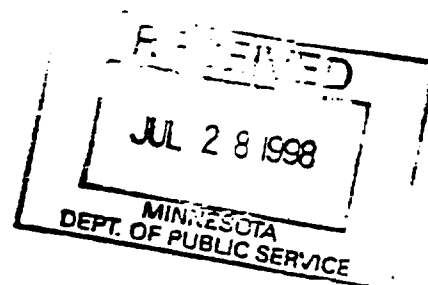
REQUEST:

Why, when a customers calls the Mega U S WEST line, are they given separate options buttons if they are a U S WEST.net customer vs an independent ISP customer when both receive the same service from U S WEST Communications.

RESPONSE:

Although all MegaSubscriber customers receive the MegaSubscriber service from U S WEST Communications, the MegaCentral (i.e. and ISP or corporate LAN) can be provided by an entity other than U S WEST. Therefore, a process has been developed establishing a "safe harbor" for customers of ISP's other than U S WEST so that they may order MegaSubscriber service without being cross-marketed the U S WEST.net Internet service. A separate option was established in all U S WEST states in response to ISP requests.

Respondent: John Lee  
Title: Manager  
Deapartment: !nterprise  
Telephone: 303-293-6448



Docket No P421/EM-98-471  
Exhibit No. 9

State Of Minnesota  
Department of Public Service  
INFORMATION REQUEST

P421/EM-98-471

Information Requested From: U S WEST Communications, Inc.

Information Requested By:

Date Requested: 08/07/98

Date Response Due: 08/20/98

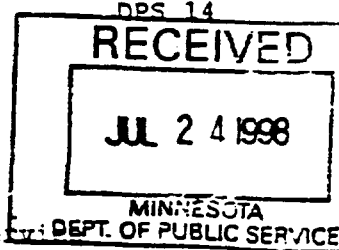
REQUEST:

Please describe the proposed two 800 number system which USW plans to implement for Megabit service orders.

RESPONSE:

U S WEST is still evaluating and has not finalized its plan to roll out a second "800" number.

State of Minnesota  
P421/EM-98-471



Information Requested From:	U S WEST Communications
Information Requested By:	Department of Public Service
Date Requested:	06/23/98
Date Response Due:	06/25/98

REQUEST:

Are mega-bit services available for resale by CLECs with a 21.5 percent discount? If not, then why not?

RESPONSE:

No, with the MegaBit service offering, U S WEST is not operating as an "incumbent local exchange carrier" providing "telephone exchange service or exchange access" under the Federal Telecommunications Act and therefore U S WEST is not subject to the discounted resale obligations in 47 USCA § 251 (c).

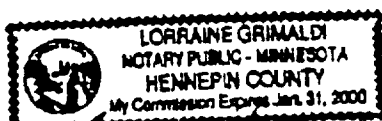
Respondent:	John Lee
Title:	Manager
Department:	Interprise
Telephone:	303-293-6448

ATTACHMENT IS

**AFFIDAVIT of Michael Wayne Davis**

I, Michael Wayne Davis, being duly sworn and under oath, state as follows:

- 1) I am the owner of Sihope Communications, an independent Internet service provider (ISP)
- 2) I am submitting this affidavit in support of the Department of Public Service's complaint to be filed before the Minnesota Public Utilities Commission regarding the rollout of US WEST's Megabit Service
- 3) **SERVICE DELAYS.** Sihope Communications placed all necessary orders during mid-April with the expectation of becoming an active MegaCentral provider in early May. There were significant delays in US West's order processing and installation that caused the active date to slip nearly one month. Details are as follows:
  - a) Communication lines were ordered from US West on 4/2/98, requesting delivery as soon as possible. US West stated a delivery date of 5/4/98. The communications equipment (CPE) was ordered from US West during the week of 4/13/98, again, requesting delivery as soon as possible. US West stated a delivery date of 5/5/98 for the electronics.
  - b) The US West MegaCentral executive summary (application) was submitted on 4/16/98, and approved by US West on 4/17/98.
  - c) US West completed the installation of the communications lines on 5/18/98 (14 days past due).
  - d) The necessary electronics (CPE) were not installed and tested by US West until 5/29/98 (24 days past due). Furthermore, without this equipment in place, US West would not list Sihope Communications as an *active* MegaCentral provider; they would not take customer orders to be connected to Sihope's service.
  - e) US West's WWW site did not list Sihope Communications as a MegaCentral provider until 6/8/98.
- 4) **CUSTOMER ORDER ISSUES.** After Sihope Communications was activated as a MegaCentral provider, there were additional problems associated with the customer order process.
  - a) *During the initial rollout of the US West DSL service, US West offered a free DSL modem for having the DSL service installed. In this promotion, there was no requirement to use a specific MegaCentral provider. On several occasions, customers calling US West to order the DSL service with Sihope Communications as their MegaCentral provider, were told that they were not eligible to receive the free equipment. They were specifically told that they (the customer) needed to subscribe to USWEST.NET (US West's competing service) in order to receive the free equipment.*
  - b) As a service to potential Sihope customers, and to avoid the problems stated above, Sihope Communications offered to fill out US West's DSL order forms and submit them on behalf of the potential customer [see exhibit 1]. Even though these requests were faxed to US West from Sihope Communications, and were submitted on Sihope Communications letterhead, US West processed the orders connecting Sihope's customers to USWEST.NET
- 5) **BILLING ISSUES.** Additionally, communications charges started as of the 5/18/98-installation date for the lines. US West has a 15-day delay for processing the MegaCentral orders. With the 5/29/98 installation of the CPE (and Sihope attaining an "Active" status) the earliest Sihope customers could receive service was 6/13/98. This created the situation whereby I was billed for one month of communications charges that US West prevented me from using.
- 6) **WITHOLDING COMPETITIVE INFORMATION.** On 3/18/98 during a meeting between US West and local ISP's, information was disclosed regarding the geographic availability of the US West DSL capacity and availability. (Ms. Karen Puffett of US West was reading a document with this information to the general audience.) When Ms. Puffett was asked if this information were available for distribution, she indicated that it was not. This information is of great importance in targeting advertising and promotion to areas where the service is highly available (e.g., Minneapolis has nearly 100% availability while Eden Prairie has only 33%). After further discussion during the meeting, the US West Management team in attendance agreed that this information should, and would be made available to all ISP's. As of 9/9/98, this information has not been provided to the independent ISP's. We are very concerned that, even with the rules regarding Discriminatory Interconnection, it is very possible that some employees of USWEST.NET would have access to this otherwise regulated information, and that it could be used for an unfair marketing advantage.





http://www.sihope.com  
info@sihope.com

Sihope Communications  
2642 Lyndale Ave S  
Minneapolis, MN 55408  
(612) 829-9667  
(612) 872-0469 Fax

## Letter of Authorization

The Below named Internet Service Provider, Sihope Communications, is authorized on our behalf to place orders for only the following U S West Communication services.

256K Megabit DSL

This authorization does not preclude our ability to act on our on behalf. Or to authorize other representatives to act as our agent in matters concerning telecommunications services, as evidenced by other written letter or letters of authorization.

Customer: STEVEN HICKMAN

Name of company

1696 Ashland AVE #1  
Address

St. Paul MN 55104  
City, state, zip

Steven Hickman  
Authorized signature

Steven Hickman  
Print name and title

Internet Service Provider:

Sihope Communications

Name of company

2642 Lyndale Ave South  
Address

Minneapolis MN 55408  
City, State, Zip

Authorized Signature

Michael W Davis, President  
Print Name and Title

RECEIVED TIME JUN. 1. 3:58PM  
P.1 210310

SWISAS HEALTH SYSTEMS JUN. 1. 1998 3:57PM

Docket No P421/EM-98-471  
Exhibit No. 1





http://www.sihope.com  
info@sihope.com

Sihope Communications  
2642 Lyndale Ave S  
Minneapolis, MN 55408  
(612) 829-9667  
(612) 872-0469 Fax

## DSL US West Megasubscriber Ordering Form

Date: 6-5-98  
Add to existing telephone number: 645-0597  
Megabit Service Type: 256K  
Megabit Service term: Month to month \_\_\_\_\_  
1 Year Contract X  
3 Year Contract \_\_\_\_\_  
5 Year Contract \_\_\_\_\_

### Megacentral Name:

Billing Name: Sihope Communications  
Billing Address: 2642 Lyndale Ave S.  
City, State & Zip: Minneapolis, MN 55408  
Voice Telephone Number: (612) 829-9667  
Fax Number: (612) 872-0469  
E-mail address: dsl@sihope.com

### Installation Address:

Listed name: Steve Hickman  
Listed Address: 1616 Ashland Ave SE  
City, State & Zip: St Paul MN 55104  
Customer Contact Name: Steve  
Telephone Number: 645-0597  
E-mail address: shick@sihope.com

Is Loop pre-qualified: Yes X No \_\_\_\_\_

### Microfilters Phone Information:

How many wall plate phones are in the house? 0  
How many regular phones are in the house? 1

Order placed by: Sandie Davis  
Telephone number: (612) 829-9667  
E-mail address: sandied@sihope.com

### Computer information:

Type of computer: PC X Mac \_\_\_\_\_  
Ethernet NIC card already installed? Yes \_\_\_\_\_ No X  
US West Tech Rep to install NIC? Yes X No \_\_\_\_\_

**SIHOPE**

<http://www.sihope.com>  
[info@sihope.com](mailto:info@sihope.com)

Sihope Communications  
2642 Lyndale Ave S  
Minneapolis, MN 55408  
(612) 829-9667  
(612) 872-0469 Fax

## DSL US West Megasubscriber Ordering Form

Date: 6-9-98

Add to existing telephone number: 612-721-0165

Megabit Service Type: 256K

Megabit Service term      Month to month \_\_\_\_\_  
   1 Year Contract      X  
   3 Year Contract      \_\_\_\_\_  
   5 Year Contract      \_\_\_\_\_

### Megacentral Name:

Name: Sihope Communications  
Address: 2642 Lyndale Ave S.  
City, State & Zip: Minneapolis, MN 55408  
Voice Telephone Number: (612) 829-9667  
Fax Number: (612) 872-0469  
E-mail address: [dsl@sihope.com](mailto:dsl@sihope.com)

### Installation / Billing Address:

Listed name: Wayne + Darn Grimmer  
Listed Address: 2206 East 36 1/2 St  
City, State & Zip: Minneapolis, MN 55407  
Customer Contact Name: ~~412-721-3831~~ Wayne Grimmer  
Telephone Number: 612-721-3831  
E-mail address: [wayne@sihope.com](mailto:wayne@sihope.com)

Is Loop pre-qualified:      Yes X      No \_\_\_\_\_

### Microfilters Phone Information:

How many wall plate phones are in the house?      0  
How many regular phones are in the house?      1

Order placed by: Sandie Davis  
Telephone number: (612) 829-9667  
E-mail address: [sandied@sihope.com](mailto:sandied@sihope.com)

### Computer information:

Type of computer:	PC <u>X</u>	Mac _____
Ethernet NIC card already installed?	Yes <u>X</u>	No _____
US West Tech Rep to install NIC?	Yes <u>X</u>	No _____



<http://www.sihope.com>  
[info@sihope.com](mailto:info@sihope.com)

Sihope Communications  
2642 Lyndale Ave S  
Minneapolis, MN 55408  
(612) 829-9667  
(612) 872-0469 Fax

## Letter of Authorization

The Below named Internet Service Provider, Sihope Communications, is authorized on our behalf to place orders for only the following U S West Communication services.

Megabit DSL

This authorization does not preclude our ability to act on our on behalf. Or to authorize other representatives to act as our agent on matters concerning telecommunications services, as evidenced by other written letter or letters of authorization.

We agree that we are responsible for all charges incurred by US West Communications services that are provided to us, regardless of whether the service is ordered directly by us or by our agents or agents.

Customer:

Name of company

2206 E 26 1/2 St.  
Address

Minneapolis, MN 55407  
City, state, zip

Wayne J. Gorman  
Authorized signature

Wayne J. Gorman  
Print name and title

Internet Service Provider:

Sihope Communications  
Name of company

2642 Lyndale Ave South  
Address

Minneapolis MN 55408  
City, State, Zip

Michael W Davis  
Authorized Signature

Michael W Davis, President  
Print Name and Title

STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) ss  
)

AFFIDAVIT OF SERVICE

I, Linda Chavez, on the 10th day of September, 1998, served the attached  
~~DPS Comments~~ *Complaint*

Docket Numbers P421/EM-98-471

- X by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.
- X by personal service
- by express mail
- by delivery service

to all persons at the addresses indicated below or on the attached list:

Linda Chavez

P  
Burl W. Haar, Exec Sec  
MN Public Utilities Commission  
350 Metro Square Bldg  
121 7th Place East  
St. Paul, MN 55101

Don Hallblade  
Technical Solutions  
PO Box 548  
Anoka, MN 55303-0548

P  
Linda Chavez (4)  
MN Dept of Public Service  
200 Metro Square Bldg  
121 7th Place East  
St. Paul, MN 55101

Michael W. Davis  
SIHOPE Communications  
2642 Lyndale Avenue South  
Minneapolis, MN 55408

P  
J. Jeffery Oxley  
Attorney General's Office  
1200 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101

Scott Wilensky  
Attorney General's Office-RUD  
1200 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101

P  
~~John H. O'Brien~~ Linda Gale  
U S WEST Communications  
200 South 5th St., Suite 395  
Minneapolis, MN 55402

P  
Kevin J. Saville  
U S WEST Communications  
200 South 5th St., Room 395  
Minneapolis, MN 55402

Marty Shoemaker  
Minnesota OnLine  
Suite 3171  
332 Minnesota Street  
St. Paul, MN 55101-1308

**APPENDIX B****BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Filing of	)	
	)	
U S WEST COMMUNICATIONS, INC.	)	DOCKET NO. UT-980416
	)	
for Approval of a New Digital	)	ORDER SETTING BANDED RATE
Subscriber Line Service Offering	)	PROVISIONS OF MEGABIT SERVICES
Denominated as "MegaBit Service"	)	TARIFF WITH CONDITIONS AND
.....	)	ORDER INSTITUTING INVESTIGATION

**BACKGROUND**

On March 13, 1998, U S WEST Communications, Inc. (U S WEST or Company), filed with the Commission, in Docket No. UT-980416, its Tariff Advice No. 2933T, requesting Commission approval of a new digital subscriber line (DSL) service denominated as "MegaBit Services." The new service provides subscribers with the capability for simultaneous voice and high-speed data services over a single, copper-pair, wire. U S WEST proposes to use banded rates for this service, which has the effect of reducing the Company's notice requirement from 30 to 10 days for rate changes within a band.

U S WEST proposes to deploy the service initially in these areas of its service territory: Auburn, Bellevue, Bellingham, Des Moines, Federal Way, Issaquah, Kent, Mercer Island, Olympia, Puyallup, Renton, Seattle, Spokane, and Tacoma. The Company initially proposes an in-service date of June 8, 1998.

**MEMORANDUM**

The tariff filing was scheduled to come before the Commission at its regularly-scheduled open public meeting of April 8, 1998. Prior to the open meeting, the Company, Commission Staff, and the Washington Association of Internet Service Providers (Association) reached agreement on the conditions under which U S WEST could begin deploying its MegaBit Services. The Company also filed a modified tariff to reflect a rate change in the tariff following negotiations with Commission Staff.

At the April 8, 1998 open meeting, U S WEST notified the Commission that it would not abide by two "key" issues in the agreement it had reached with Commission Staff and the Association. At that time, Commission Staff changed its recommendation that the Commission allow the tariff to go into effect on the effective date delineated in the modified filing. Commission Staff instead proposed the Company extend the tariff's effective date to permit further effort to resolve differences over the tariff.

DOCKET NO. UT-980416

PAGE 2

The tariff filing was rescheduled to come before the Commission at its regularly-scheduled April 22, 1998 open public meeting. Prior to the open meeting, the Company again modified the tariff to reflect additional negotiations with Commission Staff. At the open meeting, Commission Staff recommended the tariff be permitted to go into effect, as modified, on April 23, 1998, subject to the conditions negotiated with the Company. Those conditions, described in Commission Staff's April 22, 1998 Memorandum to the Commission, will require U S WEST to do the following:

1. Reduce the nonrecurring charges, including the MegaSubscriber change charge, to levels that more accurately reflect cost;
2. Provide a one-time waiver of the MegaSubscriber change charge through 1998;
3. Introduce service in two phases as proposed by Staff in its original memo;
4. Provide an unbiased list of ISPs using their domain names and commit to working with the ISPs on maintaining this list;
5. Not engage in cross-selling its internet service to a) MegaSubscribers who are already signed up with a DSL-compatible ISP; and/or b) MegaSubscribers who move from one location to another;
6. Not take orders for MegaSubscriber Service prior to the effective date of that service;
7. Develop a procedure to avoid MegaSubscriber slamming;
8. Qualify loops that are tested at, or around, the 256 Kbps minimum speed;
9. Develop a database for identifying DSL-compatible loops;
10. Maintain accounting records between its regulated and unregulated services in a manner that is easily audited to verify that the company is not gaining an unfair advantage over other MegaBit Service customers.

DOCKET NO. UT-980416

PAGE 3

## COMMISSION DISCUSSION AND DECISION

At the April 22, 1998 open meeting, concern was expressed by various commentators about issues posited by the tariff and its proposed implementation by the Company. Specifically, Commission Staff and Public Counsel addressed the appropriate level of non-recurring charges regarding MegaBit Services. Public Counsel further addressed the potential for providing undue preference for U S WEST's Internet service offering through the marketing of MegaBit Services. Commission Staff recommended the Commission initiate an investigation into the proposed non-recurring charges in the tariff, a position supported by Public Counsel.

MCI and Public Counsel asked the Commission to require the Company to provide the MegaBit Services for resale, as a retail service subject to the wholesale discount prescribed in the Commission's Eighth Supplemental Order in Docket No. UT-960369, *et al.*, and MCI's interconnection agreement with U S WEST, all pursuant to the federal Telecommunications Act of 1996 (Act). MCI also supported restrictions on marketing practices, and asked the Commission to resolve the issues of resale and marketing practices *before* approving the tariff.

Several Internet service providers spoke in opposition and in support of the filing. The Association also supported the filing, based upon the conditions recommended by Commission Staff in its Memorandum.

An Internet service provider from Vancouver, Washington, expressed concern that U S WEST's initial deployment schedule did not include Vancouver, the state's fourth largest city. U S WEST committed to move with deliberate speed to accomplish the deployment of MegaBit Services in Vancouver.

The Commission is very disturbed by U S WEST's lack of clarity with regard to the issue of the wholesale discount. We believe that the Act is unambiguous in requiring that all retail telecommunications services are subject to resale at the appropriate wholesale discount. This Commission has prescribed that wholesale discount in its Eighth Supplemental Order in Docket No. UT-960369. We are at this time completely unpersuaded by U S WEST's position that this retail service is distinguishable under the Act.

The Commission has clarified with U S WEST that the rules and procedures recently prescribed by the FCC regarding CPNI shall apply to MegaBit Services. Second Report and Order, CC Docket Nos. 96-115 and 96-149 (February 26, 1998). The Commission is in the process of adopting revised rules on CPNI as well. The Commission and the Company have further clarified that U S WEST will immediately cease all marketing and cross-selling of its Internet service to potential MegaSubscribers. The Company will accept no orders for



DOCKET NO. UT-980416

PAGE 4

MegaSubscriber service until June 19, 1998, and all interaction with customers after that date will continue to be subject to the above conditions.

The Commission will permit the MegaBit Services tariff to go into effect, as amended, and as conditioned by agreement between Commission Staff and U S WEST. While we support immediate deployment of this new technology in Washington, we recognize the Company's lack of clarity in its position on the issue of the wholesale discount may well necessitate further action to enforce Commission Orders and existing interconnection agreements. By this action, we express no approval of any particular marketing method or script by U S WEST. We will also order that an investigation be commenced immediately into the non-recurring charges proposed by the Company in the MegaBit Services tariff.

### ORDER

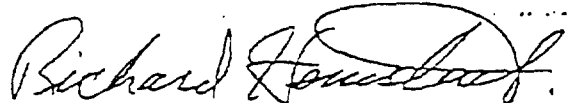
THE COMMISSION ORDERS That the MegaBit Services tariff filed in this matter is permitted to become effective April 23, 1998, subject to the conditions negotiated by U S WEST and Commission Staff and accepted by the Commission, and that the rates for MegaCentral and MegaSubscriber may be changed upon ten days notice as provided in the MegaBit Services tariff; and, further that an investigation is commenced immediately into the non-recurring charges proposed by the Company for MegaBit Services.

DATED at Olympia, Washington, and effective this 22nd day of April 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chair



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Filing of )  
 )  
U S WEST COMMUNICATIONS, INC. ) DOCKET NO. UT-980416  
 )  
for Approval of a New Digital ) FIRST SUPPLEMENTAL ORDER  
Subscriber Line Service Offering ) DEFERRING EFFECTIVE DATE  
Denominated as "MegaBit Service" ) OF MEGASUBSCRIBER SERVICE  
..... )

BACKGROUND

In the Commission's Order Setting Banded Rate Provisions of MegaBit Services Tariff, With Conditions, entered on April 22, 1998, the Commission approved a revised tariff filed by U S WEST Communications, Inc. ("U S WEST"), for the Company's proposed digital subscriber line service, which it calls "MegaBit Services". That approval was subject, inter alia, to the conditions agreed to by U S West and accepted by the Commission at its open meeting on April 22, 1998.

Among the conditions to the approval was a two-phase rollout of the service as proposed by Commission Staff in a memorandum dated April 8, 1998, and agreed to by U S West both orally and by letter dated April 21, 1998. That adopted condition included a requirement that the originally-planned June 19 rollout for MegaSubscriber Service be deferred if the Company is not reasonably able to satisfy all initial Internet Service Provider ("ISP") orders for MegaCentral Service by the June 19, 1998, date.

At the Commission's open meeting on June 15, 1998, the Commission Staff and the Washington Association of Internet Service Providers ("WAISP") presented evidence that the conditions incorporated into the Commission's earlier order were not met. Specifically, the Staff and WAISP presented compelling evidence that U S West has not fulfilled a large percentage of the orders for MegaCentral Service and would not satisfy all ISP orders by the originally planned June 19 rollout. Pursuant to U S West's response to Staff's data request, as of June 12, 1998, the company had only installed the necessary central office equipment needed to provision MegaBit Service in four of its forty-two designated central offices. Without this equipment, MegaBit Service cannot be provided. In addition, U S West determined that only four of the initial thirty-two orders for MegaCentral Service would not require new construction and thus many of these orders would not be completed by the target date of June 19, 1998.

Prior to making this filing, U S West knew the locations of Internet Service Providers located in its operating region. The company also knew what facilities it had in place which would be available to fulfill projected orders for this service.

U S West should have been aware that additional interoffice facilities would be required to provide MegaBit Service prior to filing its proposed tariff in March. The Commission's previous order dated April 22, 1998, set forth the conditions on which the tariff would become effective. As described above, we believe that U S West has not met the necessary conditions under which it would be permitted to begin the second phase of the rollout for this service.

#### FINDING

Therefore, the Commission finds as follows:

1. The condition contained in our April 22 Order that U S West reasonably satisfy all orders of Internet Service Providers for MegaCentral Service prior to the planned rollout of MegaSubscriber Service has not been met and, therefore, the planned date for taking orders for MegaSubscriber Service of June 19, 1998, should be deferred.
2. Based on the representation by U S West that 90% of the outstanding orders for MegaCentral Service will be completed by July 9, 1998, we find that a sufficient portion of those outstanding orders will be complete by that date so as to be consistent with the intent of our April 22 Order.

#### ORDER

THE COMMISSION ORDERS That U S West must not begin taking orders for its MegaSubscriber Service prior to July 9, 1998, consistent with the intent of our April 22 Order.

DATED at Olympia, Washington, and effective this 18th day of June 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chairwoman



WILLIAM R. GILLIS, Commissioner